

# EXHIBIT J

ROBINSON, OFFICER GARY KEITH

07/18/2018

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1	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION	
2	RICHARD KAPUSCINSKI, Personal Representative of the Estate of DAVID KAPUSCINSKI, Deceased, Plaintiff,	1 WITNESS: 2 OFFICER GARY KEITH ROBINSON
3	Case No. 2:17-cv-11281	3 Direct Examination by Mr. Weglarz 4 Cross-Examination by Ms. McGiffert
4	vs. Hon. Arthur J. Tarnow	5 Redirect Examination by Mr. Weglarz
5	Mag. Judge Anthony P. Patti	6
6	OFFICER NICHOLAS B. MITCHELL, OFFICER GARY ROBINSON, CITY OF ROCKWOOD, and CITY OF GIBRALTAR, Jointly and Severally, Defendants.	7 EXHIBITS: 8 Exhibit 1 Gibraltar Taser Policy 9 Exhibit 2 Gibraltar Use of Force 10 Exhibit 3 Robinson Report 11 Exhibit 4 Bedroom Photograph 12 Exhibit 5 Post Mortem Report 13 Exhibit 6 Kapuscinski Photograph 14 Exhibit 7 Kapuscinski Photograph 15 Exhibit 8 Kapuscinski Photograph 16 Exhibit 9 Kapuscinski Photograph 17 Exhibit 10 Taser Data Log
7	DEPOSITION OF OFFICER GARY KEITH ROBINSON Taken by the Plaintiff on the 18th of July, 2018, at the offices of the Gibraltar Police Department, 29450 Munro Street, Gibraltar, Michigan, at 10:04 a.m.	18 MARKED 19 20 21 22 23 24 25
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1	APPEARANCES: For the Plaintiff:	1 Gibraltar, Michigan
2	MR. TODD J. WEGLARZ (P48035) Fieger Fieger Kenney & Harrington PC 19390 West 10 Mile Road Southfield, Michigan 48075 (248)355-5555	2 Wednesday, July 18, 2018 - 10:04 a.m. 3 OFFICER GARY KEITH ROBINSON
3		4 HAVING BEEN CALLED BY THE PLAINTIFF AND SWORN: 5 MR. WEGLARZ: Okay. We're here for the deposition of Doctor -- Doctor --
4		6 MS. FORBUSH: Whoa. 7 MR. WEGLARZ: -- Officer Gary Robinson. I know everyone calls you doctor.
5		8 THE WITNESS: Yeah. 9
6		10 MR. WEGLARZ: Taken pursuant to notice and agreement of counsel. Officer Robinson, my name's Todd Weglarz. I'm going to ask you some questions today about yourself and, of course, about this incident involving Mr. Kapuscinski. If you do not understand a question, let me know. I will rephrase. If you want to take a break, just say so. That won't be a problem. Fair enough?
7	For Defendants Robinson and City of Gibraltar:	11
8	MS. AUDREY J. FORBUSH (P41744) Plunkett Cooney 111 East Court Street, Suite 1B Flint, Michigan 48502 (810)342-7014	12
9		13
10		14
11		15
12	For Defendants Mitchell and City of Rockwood:	16
13	MS. LAUREL F. MCGIFFERT (P31667) Plunkett Cooney 150 West Jefferson, Suite 800 Detroit, Michigan 48226 (313)983-4751	17
14		18
15		19
16		20
17	Also Present: Chief Krause Officer Nicholas Mitchell	21
18		22
19		23
20	REPORTED BY:	24
21	Ms. Leah M. Witt, CSR-8825 Certified Shorthand Reporter (248)644-8888	25
22		BY MR. WEGLARZ: Q. For the record, full and complete name, please. A. Gary Keith Robinson.
23		Q. Date of birth? A. 11/3/83.
24		
25		

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1 Q.	Did you review anything to prepare yourself for your deposition?	1 A.	<b>Yes.</b>
3 A.	<b>Yes, I did.</b>	2 Q.	Okay. And I take it you've reviewed those before, correct?
4 Q.	And what did you review?	4 A.	<b>I have before. Not in preparation for today, though.</b>
5 A.	My police report, the Michigan State Police report, written statements from the three people on-scene there, and I have my Taser -- Gibraltar Police Department Taser policy.	5 Q.	Fair enough. Just give me a sec.
6		6	MR. WEGLARZ: Mark this 1, and this is going
7		7	to be 2.
8		8	(At 10:08 a.m., Exhibits 1 and 2 marked)
9 Q.	Can I see the Taser policy?	9	BY MR. WEGLARZ:
10 A.	<b>Sure.</b>	10 Q.	Officer Robinson, I've handed to you Exhibits 1 and 2.
11 Q.	And while you're doing that, anything else that you reviewed?	11	I believe Exhibit Number 1 is the Taser policy that we just identified, correct?
13 A.	<b>I think we listened to a couple audio things with my attorney here.</b>	13 A.	<b>Correct.</b>
14 Q.	Okay. And when did you listen to the audio?	14 Q.	And that Taser policy was in effect at the time of the incident involving Mr. Kapuscinski?
16 A.	<b>A few weeks ago? Was it two or three weeks ago when we were first here? And then some more today.</b>	16 A.	<b>Correct.</b>
17 Q.	Did you listen to those audios before we took Mitchell's deposition, or was it after?	17 Q.	And you are aware of all the contents of that policy prior to the Kapuscinski incident, true?
20 A.	<b>I think we listened to before.</b>	19 A.	<b>Yes.</b>
21 Q.	Okay.	20 Q.	Okay. And that Taser policy was the policy promulgated by the Gibraltar PD?
22	(At 10:06 a.m., Chief Krause and Officer	22 A.	<b>Correct.</b>
23	Mitchell enter the deposition)	23 Q.	Okay. And what I've marked as Exhibit Number 2 are the use of force policies that were provided to me by the Gibraltar PD. Have you ever seen those policies before
24	CHIEF KRAUSE: I apologize for our tardiness,	25	
25	but unfortunately we had things come up. Where's your		
Page 6		Page 8	
1	newbie?	1	marked as Exhibit Number 2?
2	MS. MCGIFFERT: Oh, she had to go somewhere	2 A.	<b>I'm sure I have.</b>
3	else today. I'll tell her you missed her, though.	3 Q.	Okay. And would you have been aware of all of the content of the policies that we've marked as Exhibit Number 2?
4	CHIEF KRAUSE: I didn't say that.	6 A.	<b>Yes.</b>
5	BY MR. WEGLARZ:	7 Q.	Okay. And you're aware of the content of those policies prior to this Kapuscinski incident.
6 Q.	All right. The audios were pertaining to what?	9 A.	<b>Correct.</b>
7 A.	<b>The incident, the Taser incident.</b>	10 Q.	Okay. Tell me a little bit about your educational background. I take it you graduated from high school?
8 Q.	And audios of what specifically?	12 A.	<b>I graduated from high school in 2002. I went to Monroe Community College, graduated in 2004. Went to the Washtenaw Police Academy in 2006, and I went to Delta Correctional Academy in 20 -- maybe '08 or '09. I don't remember.</b>
9 A.	<b>Partial I guess it's body -- body mic fram Rockwood PD and today the Michigan State Police interview.</b>	17 Q.	All right. When you completed the police academy in 2006, do you recall your class standing, your rank?
10		19 A.	<b>I think I was two or three.</b>
11 Q.	Okay.	20 Q.	Out of how many?
12 A.	<b>Just my interview.</b>	21 A.	<b>Twelve I believe.</b>
13 Q.	That was my next question.	22 Q.	And why did you go to the corrections academy?
14 A.	<b>Yeah.</b>	23 A.	<b>I was working -- at the time I was working at the sheriff's department. I started with the sheriff's department -- the Monroe County Sheriff's Department in</b>
15 Q.	Audios from state police regarding your interview, correct?	24	
16		25	
17 A.	<b>Yep.</b>		
18 Q.	Any others?		
19 A.	<b>No.</b>		
20 Q.	Okay. Anything else that you reviewed?		
21 A.	<b>I don't believe so.</b>		
22 Q.	Okay. Did you review the other policies from the Gibraltar PD in addition to the Taser policy?		
23			
24 A.	<b>No.</b>		
25 Q.	All right. The Gibraltar PD has use of force policies?		

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		Page 9	Page 11
1	2007.		
2	Q. And when did you finish that -- the academy?		1 Rockwood PD?
3	A. Oh, it's only -- it's a month-long program. They send		2 A. No.
4	you to Bay City. I don't know if I took it in '08 or		3 Q. How about while with Gibraltar?
5	'09, so I wouldn't be able to tell.		4 A. No.
6	Q. 2008 or 2009?		5 Q. While you were employed at Rockwood PD, were you
7	A. Yeah. That's my guess, yeah.		6 employed anywhere else?
8	Q. All right. Any other education?		7 A. No.
9	A. I went to EMT school. That was through Gibraltar PD,		8 Q. Where were you working prior to Rockwood?
10	and that would have been in 2013.		9 A. Prior to there I had two jobs at the same time. I was
11	Q. And why did you go through that?		10 Monroe County Sheriff's and the Carleton Police
12	A. All the police officers in Gibraltar are EMTs.		11 Department.
13	Q. When did they start that? Is that a requirement?		12 Q. And when did you first start working with the Monroe
14	A. Yeah. I think that's been forever.		13 County Sheriff Department?
15	Q. Okay. Any other education?		14 A. April of 2007.
16	A. I don't think so.		15 Q. And how about with Carleton?
17	Q. Okay. You obviously are currently employed, right?		16 A. Probably -- it was later on in 2007. Five, six months
18	A. Yes.		17 later. I don't know.
19	Q. Gibraltar PD?		18 Q. While you were at Rockwood, that was a full-time
20	A. Yes.		19 position?
21	Q. And how long have you been with the Gibraltar Police		20 A. Yes.
22	Department?		21 Q. Okay. How about with the Monroe County Sheriff
23	A. Since January of '13.		22 Department?
24	Q. And job title, job responsibilities have been the same		23 A. Full-time position also.
25	since January of 2013?		24 Q. Okay. How about with Carleton?
		Page 10	25 A. That was part time.
		Page 10	Page 12
1	A. Yes.		1 Q. And how many hours at Carleton?
2	Q. Are you employed anywhere else currently?		2 A. Per month maybe 20 hours is kind of my guess.
3	A. No.		3 Q. And what were you doing there?
4	Q. Okay. I take it this is a full-time position?		4 A. Patrolman.
5	A. Yes.		5 Q. How about for the sheriff's department with Monroe?
6	Q. Forty hours a week?		6 A. Correctional officer.
7	A. Plus, yes.		7 Q. Always corrections with Monroe?
8	Q. Where were you working prior to the Gibraltar Police		8 A. Yeah. I started as a deputy and then did corrections
9	Department?		9 for -- I guess was that three years?
10	A. Rockwood Police Department.		10 Q. And when did you stop working for the Monroe County
11	Q. And when did you first start working for the Rockwood		11 Sheriff Department?
12	PD?		12 A. Right when I went to Rockwood, which was that 2010?
13	A. June or July of 2010.		13 June or July of 2010?
14	Q. And when did you stop working for them?		14 Q. Okay. And why did you leave Monroe?
15	A. January of '13.		15 A. Again, looking -- better pension than Monroe County had
16	Q. And what was your job title?		16 and more money.
17	A. Patrolman, officer.		17 Q. And why did you leave Carleton?
18	Q. Doing the same thing that you do at the Gibraltar PD.		18 A. I had a full time, and I was making enough money in
19	A. Yes.		19 Rockwood at that point.
20	Q. And why did you leave Rockwood?		20 Q. Were you ever disciplined or reprimanded by either
21	A. Pension, better pay.		21 Monroe County or Carleton?
22	Q. What was better?		22 A. No.
23	A. You can -- you make more money per hour and you can		23 Q. Any other places where you've worked?
24	earn a better pension, more money for a pension.		24 A. Before then I was in college, but I worked for Kroger
25	Q. Were you ever disciplined or reprimanded while with the		loss prevention. I believe that was the time frame was

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1	2004, 2005 to probably 2006.	1 Q. Has anyone ever accused you of excessive force?
2	Q. Okay. Anywhere else?	2 A. No.
3	A. Before then would have been probably high school, which	3 Q. That includes maybe coworkers, citizen complaints,
4	would have been like Wendy's or Red Lobster. I don't	4 anything.
5	remember the years on those.	5 A. No.
6	Q. Ever been disciplined while working at Kroger?	6 Q. How long have you been using a Taser or carrying a
7	A. No.	7 Taser?
8	Q. Have you ever been arrested?	8 A. 2007.
9	A. No.	9 Q. And when did you receive your first training on a
10	Q. Ever been charged with a crime?	10 Taser?
11	A. No.	11 A. Right when I started at the sheriff's department,
12	Q. Have you ever been part of a lawsuit where you sued	12 probably April of 2007.
13	somebody?	13 Q. That was with the Monroe County Sheriff's Department?
14	A. I've never sued anybody, no.	14 A. Yes.
15	Q. Have you ever been named in a lawsuit?	15 Q. Okay. And what kind of Tasers were you using with
16	A. Yes.	16 Monroe County?
17	Q. How many times?	17 A. The X26.
18	A. I think just one.	18 Q. Have you ever used a Taser other than the X26?
19	Q. Would it be this suit or one other?	19 A. Now we carry the X2s.
20	A. One other besides this one.	20 Q. And when did that start?
21	Q. How long ago was that?	21 A. 2016.
22	A. It's ongoing.	22 Q. After this incident?
23	Q. Okay. And that lawsuit pertains to an incident that	23 A. After this incident.
24	occurred when?	24 Q. Okay. Do you know why they went from the X26 to the
25	A. Oh, 2016 maybe when I was working here. Yeah, my guess	25 X2?
	Page 14	Page 16
1	is '16.	1 A. I don't know specifically.
2	Q. Did you have your deposition taken in that case?	2 Q. Do you have any idea or understanding?
3	A. I did, yes.	3 A. I would assume just end of shelf life or end of life of
4	Q. And how long ago was that?	4 the X26. I don't think they make them anymore.
5	A. Within the last couple months.	5 Q. What type of training did you receive on the X26? We
6	Q. Who was the lawyer who asked you all these questions?	6 can start with Monroe.
7	A. My attorney was there, and I don't recall the other	7 A. Classroom, practicals.
8	attorney's name.	8 Q. And how long does that last?
9	Q. Can you give me a 45-second overview as to the incident	9 A. It's been a long time. I wouldn't -- I wouldn't be
10	that involved that case?	10 able to guess at that.
11	A. Sure. I responded to a bar where someone didn't pay	11 Q. Is this a couple hours, couple days?
12	their bill. The officer in charge instructed them to	12 A. Not days, hours. Some sort of hours.
13	pay their bill. They said they couldn't or they	13 Q. Any training beyond that, the initial classroom and
14	weren't going to. He arrested all three people, and I	14 practical?
15	think she's suing for -- she was deaf, she didn't have	15 A. The first time I got trained, any additional training?
16	an interpreter, something like that.	16 Q. Yes.
17	Q. So what's the claim?	17 A. We trained I think a couple times I was there, a couple
18	A. I guess she --	18 times in Rockwood, Gibraltar.
19	MS. FORBUSH: To the extent you understand	19 Q. What type of training did they provide to you on the
20	it.	20 Taser at Gibraltar?
21	THE WITNESS: That she didn't have an	21 A. Probably similar to the 2007 one or the 2010 and '11
22	interpreter, you know, on-scene.	22 that I had in Rockwood, classroom and deploying I think
23	BY MR. WEGLARZ:	23 two cartridges. Taser recommends two cartridges a
24	Q. No claims of excessive force?	24 year.
25	A. No, I don't think so.	25 Q. And during this training, do they instruct you on

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1      preferred target areas?	Page 17	1      someone in the chest area near the heart, that could 2      cause a cardiac problem?	Page 19
2    A. I'm sure they did.		3    A. I believe that's probably in the training somewhere.	
3    Q. Okay. And what is your understanding as to what those 4      preferred target areas are based upon that training?		4    Q. Okay. And who puts on the training for the Tasers at 5      the Gibraltar PD?	
5    A. Nothing to the head or face, nothing to the chest, 6      nothing to the groin. Preferred would be back, arms, 7      legs. In the front would be splitting the belt line, 8      you know, maybe stomach to legs.		6    A. I do now. I'm a Taser instructor.	
9    Q. And what is your understanding as to why they teach you 10     to avoid shooting at the head?		7    Q. Who's the instructor?	
11   A. So you don't put a prong through someone's eye or nose 12     or sort of injuries.		8    A. I'm the Taser instructor now.	
13   Q. And what is your understanding as to why they train you 14     to avoid or at least try to avoid shooting at the face?		9    Q. You're the instructor.	
15   A. The same thing I just said. You know, so you're not 16     shooting someone in the eye or nose or mouth.		10         MS. FORBUSH: Now.	
17   Q. Those can cause more serious injuries?		11   BY MR. WEGLARZ:	
18   A. Cause damage I would assume.		12   Q. Who was it before you?	
19   Q. And what is your understanding as to why you're trained 20     to try avoiding shooting at the groin?		13   A. Sergeant Trush.	
21   A. Not shooting at the groin.		14         MS. FORBUSH: Is that T-R-U-S-H?	
22   Q. Right. Why are you trained to avoid that area?		15         THE WITNESS: T-R-U-S-H, yep.	
23   A. Oh, okay. Again, damage. Causing damage.		16   BY MR. WEGLARZ:	
24   Q. Okay. And what is your understanding as to why you are 25     trained to avoid the chest area?		17   Q. Is he still with the department?	
Page 18		18   A. He is.	
1    A. I would assume heart, cardiac. I think they call it 2      dart to heart in the training.		19   Q. And how come you're now doing it?	
3    Q. And tell me what that means, dart to heart.		20   A. Training just came up. It came up in 2016, and the 21     chief at the time asked if I wanted to go to it. He 22     sent three instructors, myself, now the chief -- the 23     new chief, he's certified instructor. And the third 24     person -- actually, I think they had to leave early, so 25     I think there's just two of us that were certified	
Page 20			
1    A. I would assume heart, cardiac. I think they call it 2      dart to heart in the training.		1    then.	
3    Q. And tell me what that means, dart to heart.		2    Q. All right. So you're certified?	
4    A. Increasing the distance from dart to heart.		3    A. My -- I'm certified user. My instructor expired in 4      January, and I'm already signed up for next January to 5      go back to instructor school.	
5    Q. So try to maintain some distance between the heart and 6      the dart when you're deploying a Taser at somebody, 7      correct?		6    Q. And you've been a certified user since when, 2007?	
8    A. Correct.		7    A. 2007.	
9    Q. Okay. The closer the dart is to the heart, that could 10     cause injury?		8    Q. And that certification is, what, annual, every two 9      years? How long does it last?	
11         MS. McGIFFERT: Object as to foundation.		10   A. Taser recommends that you go to X amount of hours.	
12         THE WITNESS: I assume.		11   It's more what the department, I guess, can put you 12     through or afford, but I think it's pretty much every 13     year, year and a half.	
13         MS. FORBUSH: Join.		14   Q. And when you say Taser recommends, you're talking about 15     Taser International?	
14   BY MR. WEGLARZ:		16   A. Taser International.	
15   Q. Cardiac injury?		17   Q. The manufacturer of the Tasers.	
16         MS. McGIFFERT: Same objection.		18   A. Correct.	
17         THE WITNESS: I assume that's why they put 18     that there. I don't know.		19   Q. And the certification that you receive is through Taser 20     International, or is it through the department or 21     somewhere else?	
19   BY MR. WEGLARZ:		22   A. One of the officers, prior to me doing it, would put us 23     through, and it's just I'm teaching what the Taser, you 24     know, PowerPoint puts on.	
20   Q. Have you ever heard that tasing someone in the chest 21     area or near the heart area can cause cardiac problems?		25   Q. Okay. And are there a certain number of hours that you	
22   A. Never had firsthand someone shoot somebody in the chest 23     and have issues.			
24   Q. Right. I'm not asking firsthand. I'm just asking in 25     general have you heard that anywhere that if you tase			

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1	have to complete for the training to get a	1	Q. When they -- when you were tased in 2007, where did the
2	certification?	2	darts land?
3	A. Well, I can tell you --	3	A. Back. Somewhere in the back.
4	MS. FORBUSH: As an instructor or as a user?	4	Q. How about in 2016?
5	BY MR. WEGLARZ:	5	A. Back again. It was like back and belt.
6	Q. We'll start out as a user.	6	Q. Okay. All right. So when was the last time you
7	A. Our department does four hours right now per year.	7	deployed your Taser while on duty prior to this
8	Q. What does Taser recommend?	8	training in December or January?
9	A. I don't know off the top of my head.	9	A. The Kapuscinski.
10	Q. Is it more than four hours?	10	Q. And then when did you deploy your Taser prior to the
11	A. I would assume it probably is.	11	Kapuscinski incident?
12	Q. Your best estimate as to what Taser recommends, the	12	A. I was in Rockwood. I don't remember the date. It
13	number of hours for a user.	13	was -- I couldn't guess on the date.
14	A. Probably six to eight.	14	Q. Best estimate. I mean, we're talking --
15	Q. How many times have you deployed your Taser while on	15	A. Yeah.
16	duty?	16	Q. -- how many years ago?
17	A. Three total.	17	A. '11. 2011 maybe.
18	Q. And you're talking about total of all the places you've	18	Q. Okay.
19	worked or just while with Gibraltar?	19	A. I have no idea on the month or anything, though. '11
20	A. No, three total. One of them was a -- during a	20	or '12.
21	training.	21	Q. Sure. And tell me the circumstances that led up to you
22	Q. When was the last time you've deployed your Taser while	22	deploying your Taser.
23	on duty?	23	A. That one was a inmate. The inmate has just
24	A. Training last -- last year sometime. Or maybe it might	24	assaulted -- or attempted to assault an officer on the
25	have been January. It was either December or January	25	road. Took him back into the jail. He was trying
	Page 22		Page 24
1	this year.	1	to -- he was destroying the cell, kicking the windows
2	Q. And what would the circumstances be on that?	2	out of the cells, said he was going to fight us too.
3	A. Training a new scenario or a new hire, you know, to	3	We opened the door and tasered him, and then that was
4	take a voluntary exposure during our training.	4	it.
5	Q. And is that what you did, deployed it on a volunteer?	5	Q. Was this an inmate that's being transported?
6	A. Yes.	6	A. No. He was in a jail cell.
7	Q. Okay. And where did you -- where did you shoot the	7	Q. At what jail?
8	probes, the darts?	8	A. We were in Rockwood. More of a holding cell, but --
9	A. We were upstairs in the back.	9	Q. Yeah. And did you deploy the darts?
10	Q. Okay. And where did those probes land on the	10	A. Yes.
11	volunteer?	11	Q. And did they strike the victim?
12	A. Low back and I think in the top of the thigh.	12	A. Yes.
13	Q. And how many times have you deployed a Taser on a	13	Q. Where?
14	person during training?	14	A. Somewhere on his like legs or stomach. I don't recall.
15	A. Just the one.	15	Q. So that would be the front?
16	Q. That one time?	16	A. Yeah.
17	A. Just the one, yep.	17	Q. And how many times did you have to activate the Taser?
18	Q. Last December or January.	18	A. Just once.
19	A. Yeah, I think it was this January.	19	Q. For five seconds?
20	Q. Have you ever had to -- have you ever been tased?	20	A. I would guess, yeah.
21	A. Yes, two times.	21	Q. Did it work?
22	Q. Why twice?	22	A. Yes.
23	A. I did it in '07, and I raised my hand again in 2016.	23	Q. Did anyone else tase this person?
24	Q. You didn't learn.	24	A. No.
25	A. So I got a much better video of it that time.	25	Q. And did you have to fill out a report pertaining to the

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	Page 25		Page 27
1	use of that Taser?	1	top of it, but --
2	A. I would assume so, yes.	2	Q. Have you ever seen that specific Taser use report
3	Q. Okay. And what report would you have filled out? What	3	before today?
4	do they call those reports?	4	A. I don't think I've seen this, unless it's in this -- I
5	A. I know we did an incident report. I don't know if we	5	don't remember seeing it in this state police one.
6	had a use of force Taser report there at the time.	6	Q. Did you ever fill out a report like that, the Taser use
7	Q. And this is when you were with Rockwood, right?	7	report, for your actions the night that you were
8	A. Yes.	8	involved with Mr. Kapuscinski?
9	Q. Now, with the Gibraltar PD, do you have to fill out a	9	A. I did not.
10	use of force or an incident report when you deploy a	10	Q. I'll take it back. We'll talk about it some more
11	Taser?	11	later. Were you wearing a mic the night of this
12	A. An incident report. Now we have a incident report and	12	incident?
13	a actual Taser use of force report.	13	A. I was not.
14	Q. When did that start?	14	Q. Did you have a video camera in your car or on your
15	A. Sometime in '16.	15	person?
16	Q. So before that, the Gibraltar PD never required the	16	A. No.
17	filling out of a specific Taser use of force report,	17	Q. Did you have any audio recording in your car or on your
18	correct?	18	person the night of the incident?
19	MS. FORBUSH: Object to foundation. To the	19	A. No.
20	extent you know.	20	Q. And was that routine for the Gibraltar PD?
21	BY MR. WEGLARZ:	21	A. Yep.
22	Q. You can answer.	22	Q. Is that the same situation currently?
23	A. We had an incident report, basically like a narrative.	23	A. Yes, it is.
24	I don't recall if we had a use of force. I can double	24	Q. Okay. So they have no video, no audio.
25	check this policy here and see if it says it right on	25	A. Correct.
	Page 26		Page 28
1	there. It shows report required department incident	1	Q. How tall are you?
2	report.	2	A. Six-two.
3	Q. And the incident report is really just a report that	3	Q. How much do you weigh?
4	you would fill out for any incident you're involved	4	A. 240.
5	with, correct?	5	Q. Did you weigh 240 back in April of 2015?
6	A. Correct.	6	A. Probably 220.
7	Q. An arrest, a run to a place, you have to make out an	7	Q. I take it you work out regularly?
8	incident report, correct?	8	A. I do not.
9	A. Correct.	9	Q. Okay.
10	Q. Okay. You've seen Mitchell's Taser use report that he	10	A. That's why I gained 20 pounds.
11	filled out regarding this incident, right?	11	Q. Were you working out back in 2015?
12	A. I don't believe so.	12	A. Just cardio.
13	Q. Really?	13	Q. You didn't have a weightlifting routine?
14	A. I don't think so. I don't know if it was in the state	14	A. I did not.
15	police one.	15	Q. You couldn't tell me how much you bench?
16	Q. You can see my copy. It's got some highlights on it,	16	A. Could not.
17	so forgive that. But have you ever seen a report like	17	Q. Can you tell me the most you've ever benched?
18	that before?	18	A. Most I've -- I can remember was 185 in high school that
19	A. The Rockwood Police Department --	19	I recall.
20	MS. FORBUSH: The one filled out by Mitchell?	20	Q. Was there any internal review or investigation
21	BY MR. WEGLARZ:	21	regarding this incident?
22	Q. I'm just talking in general. Have you ever seen Taser	22	A. I don't think so.
23	use reports before?	23	Q. Does the Gibraltar PD have an internal affairs
24	A. Similar. We have a similar one that's -- I think it's	24	department?
25	this -- like the Axon or Taser International across the	25	A. No.

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Page 29		Page 31	
1 Q.	Do they have any department or unit or group of officers or individuals who will review incidents after the fact to see if policies and procedures were complied with?	1 Q.	Did you know David Kapuscinski before your interaction with him on April 16 of 2015?
2 A.	No.	3 A.	I did not.
6 Q.	Do you know if this incident was reviewed from a retrospective analysis by anyone at the Gibraltar PD?	4 Q.	Never even heard his name before that, fair to say?
8 A.	I would assume the chief, but I don't know.	5 A.	Never, yep.
9 Q.	The chief is who?	6 Q.	And the first time you even heard anything that involved him was when you heard something over dispatch regarding this incident, correct?
10 A.	The chief at the time was Larry Williams.	9 A.	Yep. At the time I didn't know -- obviously I still didn't know it was him, though.
11 Q.	Who is it now?	11 Q.	Understood. And what was it that you heard over the radio that related to this incident?
12 A.	Chief Matt Lawyer.	13 A.	Dispatch relayed that there was a domestic violence occurring where a young -- I think he was a ten-year-old was calling 911.
13 Q.	And where is Chief Larry Williams today?	14 Q.	Any other information that you received about this incident other than that before your interaction with Mr. Kapuscinski?
14 MS. FORBUSH:	Object to foundation. If you know.	19 A.	If I could refer to my report real quick.
16 THE WITNESS:	He works for the school now, Carlson or Gibraltar district.	20 Q.	If you need to, go right ahead.
18 BY MR. WEGLARZ:		21 A.	Thank you.
19 Q.	All right. And when was there a change in the chiefs?	22 MS. FORBUSH:	And just to clarify, when you ask whether he had any other information before he had contact with Mr. Kapuscinski, are you asking him to recount what the boy told him, what the girl told him,
20 A.	July of '17.	23	
21 Q.	Did either Chief Williams or Chief Lawyer ever discuss with you this incident about how you handled it, what you did well, what you could have done better next time, anything like that?	24	
25 A.	I don't recall anything like that.	25	
Page 30		Page 32	
1 Q.	Okay. Do you recall either of them talking to you about the incident?	1	and then the contact with Mr. Kapuscinski, or contact -- information before he gets to the scene?
3 A.	Chief Williams, I know he read me Garrity and ordered me to type my report.	3	MR. WEGLARZ: Just any information he had before his interaction with Mr. Kapuscinski --
5 Q.	Other than that, has anyone from the Gibraltar PD discussed this incident with you?	5	MS. FORBUSH: Okay.
7 A.	I think everyone pretty much knows what happened. They read the report. I don't remember anyone specific sitting down with me to discuss it.	6	MR. WEGLARZ: -- whether by radio or any other source.
10 Q.	Do you know if anyone from the Gibraltar PD was critical of anything that you did or did not do in this incident?	8 THE WITNESS:	Would you like me to relay some information from my report to you then?
13 A.	No.	9	
14 Q.	Was this incident ever discussed or brought up during any type of training for the Gibraltar PD?	10 BY MR. WEGLARZ:	
16 A.	I don't recall.	11 Q.	If you think you need to, sure.
17 Q.	When you think about and look back at this incident from hindsight, is there anything that you believe you, you know, shouldn't have done or could have done better?	12 A.	Okay. Like I said, dispatch advised the caller was a ten-year-old boy calling on a domestic. He was going to wait outside and let us in. We arrived on-scene, discovered a juvenile male standing outside the apartment complex, later identified as Angelo Beneteau. Angelo advised his mother and her boyfriend were fighting upstairs. I asked if it was physical or verbal. He stated it was both.
21 A.	No.	13	I then walked to the second floor of the apartment complex, knocked on the door, and a female opened the door -- juvenile female opened the door.
22 Q.	If this incident were to unfold tomorrow, you would do -- you would approach it the exact same way and would have done the exact same things.	14	She was crying. Later identified as Alice Beneteau. I asked where they were fighting. She pointed me to the back room. Alice was screaming, asked if he was going
25 A.	Correct.	15	
		16	
		17	
		18	
		19	
		20	
		21	
		22	
		23	
		24	
		25	

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1	to go to jail. We started to make our way to the	1 Q. Is it kind of a place where you go --
2	bedroom. I could hear groaning or moaning, and that's	2 A. Yeah. Yep.
3	kind of where I meet --	3 Q. -- to talk to other officers and listen to the radio?
4	Q. Okay.	4 A. Yep. Either meet there or, you know, somewhere just
5	A. -- or see --	5 inside of his city.
6	Q. And you're reading from your report, and we're going to	6 Q. Do you recall what you were doing the 60 minutes before
7	mark that as Exhibit Number 3 since you're reading from	7 you heard that call?
8	it.	8 A. Sixty minutes before?
9	A. That was -- that was a little bit more of a summary,	9 Q. Yeah.
10	but I was kind of off of there, though.	10 A. I'm sure just patrolling the streets.
11	Q. That's okay.	11 Q. But you have no specific memory or recollection of
12	A. Okay.	12 that?
13	Q. You're fine.	13 A. No.
14	MS. McGIFFERT: How many pages is that?	14 Q. How long do you think you were at Carlson High School
15	THE WITNESS: This is -- let's see. One,	15 before you heard the call come in?
16	two, three, four, five, six -- seven full pages. My	16 A. Probably minutes, but I don't know.
17	portion of the report is two pages.	17 Q. When you went to Carlson High School, was Officer
18	MS. McGIFFERT: Thank you.	18 Mitchell already there?
19	THE WITNESS: Yep.	19 A. I don't remember.
20	(At 10:43 a.m., Exhibit 3 marked)	20 Q. When you went there, was it your understanding Officer
21	BY MR. WEGLARZ:	21 Mitchell would be there?
22	Q. So fair to say at the time that you first saw	22 A. Yes, or he would be -- either be there waiting or
23	Mr. Kapuscinski, you did not know anything about any	23 showing up after me.
24	prior criminal record he may have had or did not have,	24 Q. But is this something that the two of you arranged --
25	true?	25 A. We set up --
Page 34		Page 36
1	A. I didn't know anything of him.	1 Q. -- in advance?
2	Q. Okay. You didn't know about anything that occurred	2 A. Yes, we set it up. Yep.
3	between Mr. Kapuscinski and the children in or near	3 Q. Okay. And when do you think you set that up?
4	that apartment or the female in the apartment, other	4 A. I'm sure just before we met there.
5	than that there was a domestic violence, they were	5 Q. Over the radio?
6	arguing and fighting, fair to say?	6 A. Probably text or called or something like that.
7	A. Correct.	7 Q. Sure. From your personal cell phone?
8	Q. You did not see a weapon on Mr. Kapuscinski at any	8 A. Correct.
9	time, fair to say?	9 Q. And this wouldn't be the first time that you and
10	A. Just his hands and legs. He didn't have any knives or	10 Officer Mitchell would have met at Carlson High School
11	guns or anything.	11 or somewhere else while on duty during your patrol
12	Q. Okay. And you never had reason to believe that he was	12 responsibilities, fair to say?
13	armed at any point in time with a weapon other than his	13 A. Correct.
14	hands and legs, correct?	14 Q. And when you would do that, you would arrange it
15	A. Correct.	15 through your cell phones, usually through a text
16	Q. Okay. And about what time did you hear this call from	16 message?
17	dispatch coming in?	17 A. Yeah. There's like messaging through the computers or
18	A. It was close to 3:30, 3:20, or something like that.	18 your phone, so one of the two. I don't really know
19	Q. And where were you when the call came in?	19 which one we used, though.
20	A. Carlson High School with Officer Mitchell.	20 Q. Fair enough. If you do a message through the computer,
21	Q. And why were you at Carlson High School?	21 that's through the police computers, correct?
22	A. Just talking with Officer Mitchell.	22 A. Yeah.
23	Q. And why were you talking with Officer Mitchell there as	23 Q. And if you do it through the phone, that's through your
24	opposed to anywhere else?	24 personal phones?
25	A. Kind of in the middle of our cities.	25 A. Correct.

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	Page 37	Page 39
1 Q.	What carrier do you use?	1 A. No, not a clue.
2 A.	Verizon.	2 Q. Is there someone who usually worked that shift during
3 Q.	And what's your cell phone number?	3 that time?
4 A.	(734)497-1948.	4 A. I couldn't guess back then. It changes quite a bit.
5 Q.	And do you recall what you and Officer Mitchell were	5 Q. So there would be two officers on duty from 7p to 3a,
6 talking about while you were there before this call	6 and then from 3a to 7a it's just you.	
7 comes through?		7 A. Correct.
8 A.	I do not.	8 Q. For this evening.
9 Q.	Do you have any recollection as to what the two of you	9 A. Yep.
10 discussed? Anything?		10 Q. What about during the day shift?
11 A.	No.	11 A. Day shift there's --
12 Q.	Do you know if there are audios -- recorded audios that	12 Q. How is it usually staffed?
13 cover what the two of you discussed?		13 A. -- usually a 7a to 7p, and there's a detective on from
14 A.	I'm sure there isn't.	14 8:00 to 4:00, and the chief is in from 8:00 to 4:00.
15 Q.	Why are you sure?	15 Q. And how many Rockwood officers are on duty from 7p to
16 A.	I would never meet up to record a conversation.	16 7a?
17 Q.	And is this a Gibraltar PD run?	17 MS. MCGIFFERT: Object as to foundation.
18 A.	The Kapuscinski? Yes.	18 MS. FORBUSH: Join.
19 Q.	Okay. And Mitchell is with Rockwood.	19 THE WITNESS: Definitely one, but I don't
20 A.	Correct.	20 know.
21 Q.	But he accompanied you on the run, right?	21 BY MR. WEGLARZ:
22 A.	Yes.	22 Q. Fair to say that you were the lead officer to handle
23 Q.	And tell me about that arrangement.	23 this run.
24 A.	Mutual aid between the cities.	24 A. Correct.
25 Q.	And was Trenton also involved?	25 Q. So it's a Gibraltar PD run, you're the Gibraltar
	Page 38	Page 40
1 A.	I believe they were called too. Our dispatcher called	1 officer, you're basically the guy in charge.
2 them.		2 A. Correct.
3 Q.	Okay. And is there a similar agreement with Trenton	3 Q. And what is Officer Mitchell's role and responsibility
4 that you have with Rockwood, this mutual aid agreement?		4 on this run?
5 A.	I think we all do have mutual aid. We typically just	5 A. I guess backup or support.
6 use Rockwood, but I'd say there's a percentage that we		6 Q. And what does it mean -- well, strike that. What does
7 definitely use Trenton too.		7 an officer typically do serving as the backup or
8 Q.	Were there any other officers from the Gibraltar PD on	8 support person?
9 duty at this time?		9 A. When you're going to a domestic, you don't want to show
10 A.	No.	10 up by yourself. Generally they would -- you know, if
11 Q.	You're the only one.	11 we can try to separate parties, talk to parties
12 A.	Correct.	12 separately, whoever's handling the -- you know, the
13 Q.	When did you start your shift?	13 complaint would talk to the victim, talk to the
14 A.	I was probably 7p to 7a.	14 suspect, and just having an extra body on scene.
15 Q.	Any other officers from Gibraltar PD working during	15 That's usually what it is.
16 that shift?		16 Q. Is the backup really just supposed to be there with
17 A.	I would assume there was somebody that got off at 3:00.	17 their presence in case they're needed?
18 I don't remember who.		18 A. Oh, yeah, definitely if they're needed and, you know,
19 Q.	At 3:00 a.m.?	19 if there's a fight or whatever it is they need to
20 A.	Yes.	20 assist.
21 Q.	And this call would have come in shortly after that?	21 Q. Does a backup person basically appear and await
22 A.	A little bit after that, yeah.	22 direction or instruction from you?
23 Q.	You don't recall who that officer was.	23 A. They could, yeah.
24 A.	I do not.	24 Q. For the most part -- I mean, I know I'm describing in
25 Q.	Do you have a general idea as to who it may be?	25 general, but is that really the role of the backup

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1	support person?	1	Q. Do you sometimes carry a stun gun that's different than
2	A. In general, right.	2	the X26 Taser?
3	Q. And when you drove to the location, you led the way,	3	A. No. I've never handled any sort of stun gun.
4	right?	4	Q. So one firearm, the .40 caliber Glock, is that what you
5	A. I would assume.	5	said?
6	Q. Okay. You watched the video from Mitchell's unit,	6	A. Yep.
7	correct?	7	Q. And the Taser. Any other weapons that you had on you?
8	A. I did. I don't remember, though. That's the one I	8	A. I don't believe so. Handcuffs, I probably had two sets
9	watched three weeks ago. I've only seen it the one	9	of handcuffs, radio, magazines, pocket knife.
10	time.	10	Q. What about a baton?
11	Q. What kind of vehicle were you in that night?	11	A. No.
12	A. A Tahoe.	12	Q. All right. So you pull up to the location here, and
13	Q. And is that a fully marked police car?	13	this is an apartment complex, correct?
14	A. Yes.	14	A. Yes.
15	Q. With lights and siren?	15	Q. You pull in and tell me what happens.
16	A. Yes.	16	A. We pull in, see the juvenile outside. Tells us they're
17	Q. Did you activate lights and siren on the way to the	17	upstairs fighting, mom and her boyfriend, physically
18	location of this incident?	18	and verbally. We walk up the steps. I think the boy
19	A. I don't think so.	19	walked halfway up the step. Me and Officer Mitchell
20	Q. Did you activate either/or?	20	made it to the front door. Knock, knock, knock.
21	A. I don't think so.	21	Screaming girl opens the door, points us to the back.
22	Q. Do you know if Mitchell did?	22	I'm talking to her very briefly, "What's going on?"
23	A. I don't think he did either.	23	Q. Can I stop you there?
24	Q. And can you tell me the uniform you were wearing and	24	A. Sure.
25	any accessories, equipment, weapons that you had on	25	Q. You see the ten-year-old kid outside?
Page 42		Page 44	
1	you?	1	A. The boy?
2	A. I was probably wearing this uniform. I had a vest on	2	Q. Yeah.
3	similar to what Officer Mitchell's wearing. It has	3	A. Yep.
4	magazines which carry your bullets in it, a radio, had	4	Q. And the info he gives you specifically is what?
5	a pouch, handcuffs all on a vest. I don't know if I	5	A. I'll refer to my report right here. Angelo advised his
6	had a Taser on my vest or if I had it on my belt at	6	mother and -- his mother and her boyfriend were
7	that time.	7	fighting upstairs, and I asked if it was physical or
8	Q. And you would have carried the Taser X26?	8	verbal. Angelo stated it was both and then walked to
9	A. Correct.	9	the second floor.
10	Q. The yellow Taser?	10	Q. And to get to the second floor, do you just go up a
11	A. Yes.	11	stairway, or do you have to go through a main entrance
12	Q. What kind of firearm did you have on you?	12	first before you can get to the second floor?
13	A. It was a Glock .40 caliber.	13	A. He has to -- he let us in the building. There's a
14	Q. And where would that be on your person?	14	glass door. I don't know if it's straight up the
15	A. That is on my right hip.	15	stairs. I think we have to go down a corridor and then
16	Q. I take it you're right-handed?	16	turn and go back on top of ourself.
17	A. Yes.	17	Q. When you say he let us in, you're talking about the
18	Q. And if you had the Glock on your right hip, where	18	child?
19	usually do you keep the Taser?	19	A. The boy, yeah.
20	A. I may have had the Taser on a vest at that time. Now I	20	Q. The boy? And Mitchell is right behind you?
21	carry it on my left hip.	21	A. Correct.
22	Q. And it would just be one Taser?	22	Q. So you go upstairs and you knock on the door.
23	A. Yes.	23	A. Yes.
24	Q. Did you have anything else like a separate stun gun?	24	Q. And this is the main entrance door to this apartment
25	A. No.	25	unit for Mr. Kapuscinski?

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Page 45		Page 47
1 A. Yes.		1 Q. Do you recall telling the state police that the little
2 Q. Are there any other doors up there to other units?		2 girl was there the entire time?
3 A. I think it's four per floor.		3 A. I don't.
4 Q. And how did you know that that particular door that you		4 Q. Do you recall the little girl being there the entire
5 knocked on was the one for Kapuscinski?		5 time?
6 A. I believe he pointed us and told us the number. I got		6 A. I do not.
7 the number in here I think. Apartment 16.		7 Q. To get to the bedroom -- there's two bedrooms, right?
8 Q. And you knocked on the door?		8 A. Correct.
9 A. Correct.		9 Q. And they're located off of a hallway?
10 Q. And who answered?		10 A. Yes.
11 A. Juvenile female.		11 Q. You walked down the hallway to get to one of the two
12 Q. And how old did the girl appear to be?		12 bedrooms and you see Mr. Kapuscinski and a female in
13 A. I think she was like seven or eight maybe.		13 the bedroom, correct?
14 Q. And she was upset at that time.		14 A. Once we go in the room, yes.
15 A. Yes.		15 Q. Okay. And is that the first time you're able to see
16 Q. She was crying?		16 anything going on? That's the first time you see
17 A. Yep.		17 Mr. Kapuscinski is when you enter that bedroom,
18 Q. And do you recall what you said to this little girl?		18 correct?
19 A. Again I asked if they were fighting, and she pointed me		19 A. Correct.
20 to the back room. She was screaming, asked if he was		20 Q. Okay. Did you hear anything before you enter the
21 going to go to jail, and I proceeded to the back room.		21 bedroom?
22 Q. When was the last time that you listened to the audio		22 A. Moaning or groaning.
23 from the police video?		23 Q. And is that moaning or groaning from a male or female?
24 A. I've only listened to it the one time partial, and that		24 A. I couldn't tell.
25 was whenever we did Officer Mitchell's -- three weeks		25 Q. And in what bedroom were Kapuscinski and the female?
Page 46		Page 48
1 ago maybe?		1 A. In which bedroom were they?
2 Q. On that video you can -- you can hear knocking and		2 Q. Yes.
3 someone says shortly after that, "How you doing?		3 A. The south -- southeast. It would have been the one on
4 Police department." Do you remember that being in the		4 the left as I was walking down the hallway.
5 audio?		5 Q. Would you have passed the other bedroom before going
6 A. No, I don't.		6 into the bedroom occupied by Mr. Kapuscinski?
7 Q. And then you hear a child crying, and then you hear an		7 A. I believe it was right to the right. I think they're
8 officer ask, "Where's mom and dad at?" Do you remember		8 door to door there.
9 that being asked?		9 Q. And tell me your first observation. What did you see
10 A. I don't, no.		10 going on in that bedroom?
11 Q. Is that most likely you?		11 A. As soon as we opened the door, I see them laying on the
12 A. I would assume it was.		12 bed. He's completely nude. Looks like he's choking
13 Q. Okay. Do you recall asking this young girl where mom		13 her, attempting to kill her. He's screaming, "I'm
14 and dad were?		14 going to kill her, I'm going to kill her." She --
15 A. You know, "Where are they fighting at?" I think she		15 Q. Can I stop you there?
16 just pointed.		16 A. Sure.
17 Q. And she pointed where?		17 Q. When you enter the bedroom, do you have your firearm
18 A. Towards the back bedrooms or towards the bedroom areas.		18 drawn?
19 Q. And did you then walk toward the bedroom areas?		19 A. I do not.
20 A. Yes.		20 Q. Do you have your Taser drawn?
21 Q. Officer Mitchell was right behind you?		21 A. I do not.
22 A. Yes.		22 Q. You see a completely nude male on the bed?
23 Q. And the little girl also followed you, correct?		23 A. Correct.
24 A. I don't remember if she followed us or stood there or		24 Q. And how is he positioned on the bed?
25 stayed in the living room.		25 A. He's laying on his left side facing me, and she's

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1	partially nude. She had just a shirt on on her left	1 or fingers. I don't know if it was fingers or the
2	side facing -- like her left side/back facing kind of	2 whole hand.
3	away from us.	3 Q. But a gesture with his hand and arm going back and
4	Q. Is she also on her side?	4 forth as if he's talking directly to you.
5	A. She's like her side/back, kind of a little bit back and	5 A. To me.
6	forth.	6 Q. Correct?
7	Q. And she's on her left side or right side going back and	7 A. Correct.
8	forth?	8 Q. Do you describe that in your report that we marked as
9	A. Left. Left side. They both have their left shoulder	9 Exhibit Number 3? I don't remember --
10	more down towards the bed. His head would be facing	10 A. Let me check here.
11	west and hers would be facing east.	11 Q. I don't remember reading that.
12	Q. Were they in a sexual act when you walked in?	12 A. The descriptions I have here was man was covered in
13	A. No.	13 sweat and he had a crazed look on his face. His eyes
14	Q. Was there any sexual activity going on when you walked	14 were opened very wide, and the whites of his eyes are
15	in?	15 very -- or were red. I don't have the holding onto her
16	A. No. It looked like he was trying to kill her.	16 legs pointing at me.
17	Q. And what did you observe for you to think that he was	17 Q. All right. And even in your audio statement to the
18	trying to kill her?	18 state police I don't -- I did not recall you describing
19	A. He was choking her with his thighs yelling, "I'm going	19 that to the state police. Do you agree you did not
20	to kill her," and she was rocking back and forth. It	20 tell the state police about this particular --
21	didn't look like she was breathing properly. I think	21 A. Yeah, I gave the --
22	she was trying to say something, but, you know, she	22 Q. -- part of the incident?
23	couldn't because he was choking her with the thighs.	23 A. I don't recall telling them that. I think I just gave
24	Q. So he has both thighs wrapped around her neck?	24 them like a summary and kind of assuming they were
25	A. Her neck, yep.	25 going to ask me more questions, kind of like how you're
Page 50		Page 52
1	Q. And where are Mr. Kapuscinski's hands?	1 breaking down everything down, and they were basically,
2	A. His arms are wrapped around her legs holding her legs	2 "Hey, give me a summary." I gave them a summary and
3	close to him, and he kept pointing with his right arm	3 then they -- I think that was pretty much it. I don't
4	at me, "I'm going to kill her, I'm going to kill her,	4 think they asked very many questions afterwards. They
5	I'm going to kill her." I think I kept telling him,	5 asked if I wanted to hurt him.
6	you know, "Get off her, get off her, let go, let go."	6 Q. All right. You never interpreted those hand or arm
7	Q. All right. So Mr. Kapuscinski I think you said had his	7 gestures to be like he was armed or pointing a gun at
8	arms wrapped around her legs, but he was also pointing	8 you.
9	his right hand toward you?	9 A. No.
10	A. Yep. So he, you know, kept holding onto her legs	10 Q. Just that he was talking to you.
11	wrapped around, but then he kept pointing his hand	11 A. That he was talking, yeah.
12	pointing at me, "I'm going to kill her, I'm going to	12 Q. And was he making eye contact with you?
13	kill her." At the same time he'd point and then bring	13 A. I described his eyes as crazed, very wide, all the
14	his arms back, point, bring his arms back. You know,	14 whites are completely red. It was almost like he
15	it's all within a few seconds, so it's, you know, back	15 was -- he was pointing at -- in my direction, but it
16	and forth.	16 was almost like he was looking through me, past me.
17	Q. And how did you interpret that gesture by	17 Q. And what about the female? Is she completely nude?
18	Mr. Kapuscinski when he's pointing and extending his	18 A. She has a -- I described it as like a scrub top, like a
19	right arm toward you saying, "I'm going to kill her"?	19 nurse's scrub top, but it was like a papery kind of
20	A. I would interpret that he was -- wanted to make sure I	20 material, disposable maybe.
21	knew he was going to kill her, pointing at me, "I'm	21 Q. Like she was a patient?
22	going to kill her."	22 A. Yes.
23	Q. Was he actually pointing his finger at you with his	23 Q. So she had that scrub top on but no bottoms, correct?
24	index finger?	24 A. Correct.
25	A. Kind of like -- I remember just the hand coming at me	25 Q. Completely nude from the waist down?

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Pages 53–56

	Page 53	Page 55
1	A. Correct.	
2	Q. And where are her arms and hands?	
3	A. I don't really -- can't really recall her arms and	
4	hands. I remember her legs and her head squished	
5	between his thighs and then her trying to turn to me.	
6	Q. Is her back to you?	
7	A. It was to me, and then it was down to the bed, to me,	
8	down to the bed. It was kind of like -- I mean, they	
9	were kind of rocking a little bit. It looked like she	
10	was struggling to try to get out of there, but, you	
11	know, this all happened just within, you know, seconds.	
12	Q. Were you able to see her face?	
13	A. Partially.	
14	Q. And describe that.	
15	A. It would have been her right side of her face. She was	
16	trying to like look over his thigh at us. You know,	
17	she didn't have like normal color skin on her face. It	
18	looked like she was oxygen deprived. Like I said, she	
19	was rocking towards us as we came in.	
20	Q. I'm going to show you a Mitchell Exhibit Number 2.	
21	You've probably seen this before. It's a photo of one	
22	of the bedrooms. Is that the bedroom where this	
23	incident took place?	
24	A. I think so. I don't see the -- well, that was cleaned	
25	up, so -- I would assume this is the picture here.	
	Page 54	Page 56
1	Q. Yes. That appears to be the bedroom where this took	
2	place, right?	
3	A. Correct.	
4	Q. Can you tell me where in the bedroom you were standing	
5	when you were making this observation?	
6	A. Somewhere in this area, this area here.	
7	Q. All right. I may have you put an X there shortly. How	
8	many feet away from the bed would you say you were?	
9	A. I don't know.	
10	Q. 3 feet, 4 feet?	
11	A. If I had to guess, maybe 6 feet. I don't know what	
12	that distance is.	
13	Q. All right. And where is Officer Mitchell?	
14	A. The door should be in this corner here. He's probably	
15	somewhere over here. I don't know. I would assume	
16	somewhere in this length of the room.	
17	Q. Is he within a foot or two away from you?	
18	A. I don't know. I just know he's kind of behind me to	
19	the side.	
20	Q. And when Mr. Kapuscinski is saying, "I'm going to kill	
21	her," how is he saying it?	
22	A. He's screaming, "I'm going to kill her, I'm going to	
23	kill her." Kind of has like a weird growl.	
24	Q. So it wasn't something that he was whispering and you	
25	could barely hear?	

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Pages 57–60

Page 57		Page 59
1 Q. You've never heard it on the audio, fair to say?		1 then deployed or pulled it out and was still giving commands.
2 MS. FORBUSH: He just said he doesn't		2
3 remember if he --		3 Q. You did deploy your Taser, right?
4 THE WITNESS: I don't remember what the audio		4 A. Correct.
5 has. I've only heard it the one time partially.		5 Q. And Officer Mitchell deployed his as well?
6 BY MR. WEGLARZ:		6 A. Eventually he did.
7 Q. Right, right. And as you sit here today, you don't		7 Q. Okay. You tased first, fair to say?
8 recall ever hearing it on the audio, correct?		8 A. I deployed first.
9 MS. FORBUSH: No, he's saying, "I don't		9 Q. All right. And when you deployed, was Officer
10 recall if I heard it. I don't recall what the audio		10 Mitchell's laser also being aimed at Mr. Kapuscinski?
11 has."		11 A. I don't recall seeing his when I deployed mine.
12 THE WITNESS: I don't remember what the audio		12 Q. Do you recall Mitchell ever having his laser directed
13 has.		13 at Mr. Kapuscinski at any point in time before you
14 BY MR. WEGLARZ:		14 deployed your Taser?
15 Q. All right. Did you ever change your positioning in the		15 A. I remember seeing his, but I don't know where I
16 room from the time that you're making this observation		16 remember seeing it. I just remember seeing the red,
17 until the time that you deploy your Taser, which we're		17 you know, kind of going across the room.
18 going to talk about shortly?		18 Q. Okay. And when you pull out your Taser, does the laser
19 A. Probably not a whole lot. I know I stayed on that		19 go on automatically?
20 right side when I came in --		20 A. Once you turn it on.
21 Q. Okay.		21 Q. And on the X26, how do you turn it on?
22 A. -- but I don't know.		22 A. Just a switch similar to the X2. Switch on the back,
23 Q. But you were basically in the same location throughout,		23 thumb switch.
24 correct?		24 Q. And you have to put that thumb switch in what position?
25 A. Same area kind of.		25 A. You have to push it up.
Page 58		Page 60
1 Q. Okay. All right. When do you deploy your Taser? Or		1 Q. And what options do you have for that thumb switch
2 when do you pull out your Taser?		2 other than pushing it up?
3 A. I know there was a lot of commands "get off her, get		3 A. Just up or down, on or off.
4 off her, get off her," or "let her go." I started to		4 Q. Are there any other levers or switches on that Taser
5 draw my Taser. I saw Officer Mitchell's -- I guess his		5 besides the on/off switch?
6 red light, his laser, the same time I was drawing mine.		6 A. There's a button on the top that you could turn the
7 I may have even said, "get off her, get off her" again,		7 flashlight off or turn the laser off or do kinds of
8 and then that's when I deployed the Taser.		8 stuff, but nobody ever -- that was something like the
9 Q. Okay. Mitchell's Taser has a laser?		9 instructor would set them up once they got the
10 A. Both of them.		10 shipment, so the only thing we would do is on and off.
11 Q. Okay.		11 Q. So fair to say you didn't use that button that you just
12 A. His has two, mine only has one.		12 described.
13 Q. And do you recall seeing Mitchell's laser before you		13 A. Didn't use that button.
14 even pulled out your Taser?		14 Q. Any other levers or buttons on that X26?
15 A. I recall seeing his as I was pulling mine out, so it		15 A. No.
16 might have been just split seconds.		16 Q. You have one cartridge, right?
17 Q. Both of you seem to pull out your Tasers at about the		17 A. Yes.
18 same time is what you're telling me?		18 Q. The X2 has two cartridges, correct?
19 A. Probably, yeah.		19 A. Correct.
20 Q. And did you pull out your Taser, aim, and shoot pretty		20 Q. When you deployed your Taser, how many feet away were
21 much in one motion, or was there some delay or pause --		21 you from Mr. Kapuscinski?
22 A. I don't --		22 A. Like we just said, a guess, maybe six. I was standing
23 Q. -- from when you pulled it out initially and then		23 towards the wall, he was on the bed.
24 deployed it?		24 Q. And is that your best estimate, about 6 feet away?
25 A. I don't recall if it was pulled it straight out and		25 A. It's just a guess there.

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Pages 61–64

	Page 61	Page 63
1 Q.	When you fill out these Taser use reports, they	1 was leaning forward pointing at me.
2	actually ask for the distance, correct? How far away	2 Q. Okay. I think now is a good time. I think I'm going
3	you were from the person that you tased, right?	3 to have you diagram now on the Mitchell Exhibit 2, and
4 A.	<b>Correct.</b>	4 we're going to call it whatever the next exhibit is.
5 Q.	That's usually information that your supervisors --	5 (At 11:21 a.m., Exhibit 4 marked)
6	that's information they want to know on any tasing	6 BY MR. WEGLARZ:
7	incident usually.	7 Q. If you need to use my pen -- that you actually gave to
8	MS. FORBUSH: Object to foundation.	8 me by the way, thank you -- if you could show me where
9	THE WITNESS: We didn't have a Taser use of	9 you were standing, first of all, when you deployed the
10	force report at the time, but --	10 Taser.
11 BY MR. WEGLARZ:		11 A. I'm going to do it right on this picture here.
12 Q.	I understand that, but that's the information that they	12 Q. Do it right on that picture.
13	usually want when you're documenting your use of the	13 A. I'm just going to draw a circle.
14	Taser, correct?	14 Q. A circle is fine.
15 A.	<b>I think the one you showed me did have it listed on there.</b>	15 A. Okay. I'm assuming the door's over here somewhere, so
16		16 I'm somewhere in here.
17 Q.	So you're about 6 feet away. How far -- when you	17 Q. That's the best you can do for me?
18	deployed your Taser, two darts come out of it, correct?	18 A. Yeah.
19 A.	<b>Correct.</b>	19 Q. All right. So you're standing somewhere in that circle
20 Q.	And to do that you have to press the trigger?	20 at the time you deployed that Taser, correct?
21 A.	<b>Correct.</b>	21 A. <b>Correct.</b>
22 Q.	And those two darts are in the cartridge that's loaded	22 Q. Okay. And you were also standing in that circle when
23	into the Taser, correct?	23 you've been telling us about your observations of what
24 A.	<b>Correct.</b>	24 you saw in that bedroom so far, correct?
25 Q.	And the darts or the probes -- they call them probes as	25 A. <b>Correct.</b>
	Page 62	Page 64
1	well?	1 Q. Same area.
2 A.	<b>Probes, yes.</b>	2 A. Yep.
3 Q.	What's the distance between the two when they're in the	3 Q. Okay. And where is Officer Mitchell at this time?
4	cartridge?	4 A. Somewhere on this I would assume -- I know he walked in
5 A.	<b>Maybe an inch or so I would assume. I think they come off at some sort of an angle.</b>	5 right behind me, but somewhere in this area.
6		6 Q. Okay. Can you draw a circle as well?
7 Q.	You would have directed the laser to where you wanted	7 MS. McGIFFERT: And I'm just going to place
8	to shoot the probes, correct?	8 an objection as to foundation.
9 A.	<b>That's an approximate for the top, the top probe.</b>	9 MR. WEGLARZ: Sure.
10 Q.	What's the purpose of the laser, by the way?	10 THE WITNESS: Go ahead a draw and circle
11 A.	<b>To give you the appropriate -- or approximate area where you're going to deploy.</b>	11 here?
12		12 BY MR. WEGLARZ:
13 Q.	Right. It's so you can aim the gun and figure out	13 Q. Yeah, you can.
14	where you're going to send those darts, correct?	14 A. I'm assuming somewhere in this area.
15 A.	<b>Correct.</b>	15 Q. All right. So the circle on the left approximates
16 Q.	Right before you press the trigger, where was your	16 Mitchell's location during the time of the Taser
17	laser pointed at on Mr. Kapuscinski?	17 deployment and the events leading up to it, correct?
18 A.	<b>I don't recall. I don't remember.</b>	18 MS. McGIFFERT: Let me place an objection as
19 Q.	Do you recall where the laser was at any point in time	19 to foundation. He did say assuming, so I think you're
20	before you deployed the Taser?	20 misstating or mischaracterization of his testimony.
21 A.	<b>Somewhere on his right side to arm area.</b>	21 MR. WEGLARZ: I'll give you every objection
22 Q.	And why were you aiming it there?	22 known to mankind that you can preserve in this
23 A.	<b>That was really the only portion I could -- I could see his face, down his whole side, his right thigh, so I assumed my best area was kind of the side/back as he</b>	23 deposition.
24		24 BY MR. WEGLARZ:
25		25 Q. Is that correct?

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Pages 65–68

Page 65		Page 67	
1 A.	What was the question again?	1 A.	They're more face to face. Like he's on his left side
2 Q.	Sure. On our exhibit here, the circle that you've	2 facing this direction. She's more on her left side	
3 diagrammed for us on the left, that represents	3 kind of back a little bit facing that way.		
4 Mitchell's approximate location during the Taser	4 Q.	Okay. So she's actually in front of him, correct? If	
5 deployment, correct?	5 you're looking at it --	6 MS. FORBUSH: Object to form.	
6 A.	Correct.	7 BY MR. WEGLARZ:	
7 Q.	And it also represents his location during the events	8 Q.	-- if you're looking at it from the doorway into the
8 in that bedroom leading up to the Taser deployment.	9 bedroom, right?		
9 A.	Correct.	10 A.	She's closer to the door.
10 Q.	Okay. And the circle that you drew in to the right	11 Q.	Okay.
11 represents your location for Taser deployment and the	12 A.	Her back would be.	
12 events leading up to it, correct?	13 Q.	Where's north, by the way? If you can put that in	
13 A.	Correct.	14 there, that would help.	
14 Q.	All right. Now, you mentioned that you were aiming for	15 A.	North should be this way.
15 the right side of Mr. Kapuscinski. Can you -- can you	16 Q.	Can you do an arrow --	
16 show me -- can you put like a stick figure --	17 A.	To north?	
17 A.	I'll do -- I'm not going to do a stick figure.	18 Q.	-- with a capital N?
18 Q.	-- of Mr. Kapuscinski in that bed?	19 A.	Yeah. Should be more like this, but -- kind of.
19 A.	I'll give you this. His feet was here, his head was	20 Q.	That's fine. That works. That's a Russian N, so it
20 facing this way --	21 works out.		
21 MS. FORBUSH: You drew an arrow in the	22 A.	Yeah.	
22 direction his head was facing?	23 Q.	All right. So how are you able to see his right side	
23 THE WITNESS: His head's facing this way,	24 if she is closer to the doorway?		
24 legs are this way. Her head is facing that way.	25 A.	It's just her legs down here, and his chest is taller	
25 MS. FORBUSH: Toward the wall.			
Page 66		Page 68	
1	MS. McGIFFERT: You're probably going to have	1 than her two legs stacked up.	
2 to label those arrows so we know who is who.	2 Q.	And you have no idea where that laser was on	
3 THE WITNESS: I don't know how to spell his	3	Mr. Kapuscinski right before you deployed it.	
4 last name.	4 A.	No.	
5 MS. FORBUSH: Just put K.	5 Q.	And the last -- can you tell me where you last saw that	
6 BY MR. WEGLARZ:	6	laser on Mr. Kapuscinski before you deployed it?	
7 Q.	K is good. All right.	7 A.	I could not. It would just be a guess. You know, and
8 A.	Hers is B.	8 like I said, they're both moving at -- you know, she's	
9 MS. FORBUSH: Beneteau, yeah.	9 kind of like struggling back and forth trying to roll		
10 BY MR. WEGLARZ:	10	from her side to her back, and he's, you know, pulling	
11 Q.	So the arrows represent where the head was pointed.	11 the legs, pointing at me, pulling the legs.	
12 A.	Arrow is the head.	12 Q.	And how far away would you say she was from the edge of
13 Q.	Gotcha. And are they -- are they kind of in the middle	13	the bed? A couple inches, a couple feet?
14 of the bed?	14 A.	No, closer to the edge than -- closer to the feet area	
15 A.	No, they're more -- more towards this edge here.	15 than the head area that we discussed.	
16 Q.	All right. Towards the foot of the bed, correct?	16 Q.	Okay. Well, that can mean a lot of different things.
17 They're closer to the foot of the bed?	17	I'm just trying to figure out were they just inches	
18 A.	Yes.	18 from the edge of the bed, or did they have a couple	
19 Q.	The end of it.	19 feet?	
20 A.	Yep.	20 A.	Well, they were pretty close to this edge. I --
21 Q.	Where the head of the bed, at least for the context of	21 Q.	When we talk about the edge, we're talking about the
22 this picture, is up against the wall underneath the	22	northernmost edge.	
23 window, correct?	23 A.	Yeah.	
24 A.	Correct.	24 Q.	Edge parallel to the wall that would have the
25 Q.	And they're kind of -- they're side to side, right?	25 entranceway to it.	

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Pages 69-72

	Page 69	Page 71
1	A. The door on it.	
2	Q. Okay. Now, this circle area that you drew, it's pretty	1 (At 11:31 a.m., back on the record)
3	big. Part of it -- for where you're standing, by the	2 BY MR. WEGLARZ:
4	way. Do you know if you were at least even with the	3 Q. All right. We're looking at the medical examiner's
5	edge of the bed that would be the foot of the bed	4 report, and do you see where he's describing wounds to
6	here --	5 the back of the right arm?
7	A. I don't know.	6 A. Possibly striking the decedent in the right arm. Then
8	Q. -- or do you think you were north of the foot of the	7 the picture of it shows one on the back of the right
9	bed when you deployed your Taser?	8 arm.
10	A. I don't know.	9 Q. Right. And we're going to mark this as Exhibit Number
11	Q. So you could have been anywhere as far north as the	10 5, by the way, in a second, but the diagram here that
12	very edge of this right circle here when you deployed	11 the medical examiner has, do you see where he has this
13	that Taser or as far south to this other edge here of	12 diagram --
14	the circle where you're more than midway at the bed,	
15	right?	13 A. Yeah.
16	MS. FORBUSH: Object to the form.	14 Q. -- with the circle to the back of the right arm by the
17	THE WITNESS: Yeah, I don't really know	15 elbow?
18	specifically where I was standing.	16 A. Yep.
19	BY MR. WEGLARZ:	17 Q. Is that where the probe hit that you deployed?
20	Q. Did the probes hit Mr. Kapuscinski?	18 A. I would assume that's probably what they're circling
21	A. I believe one probe hit him in the arm.	19 there.
22	Q. Okay. In which arm?	20 Q. Okay. But do you recall that being the area where the
23	A. Pointing --	21 dart hit?
24	Q. Can I have that --	22 A. Oh, yeah. I think it was in the arm, yeah.
25	A. Yeah, absolutely.	23 Q. That seems to be about correct to you.
		24 A. Probably right.
		25 Q. That looks like where your dart hit him, correct?
	Page 70	Page 72
1	Q. -- pen back that you gave me?	1 A. Yeah.
2	A. He was pointing at me with his right arm, so I think it	2 MS. FORBUSH: One dart.
3	was his right arm I hit him. I don't know if I hit him	3 THE WITNESS: One dart, yeah. They keep
4	when he was pointing or if he was grabbing her legs to	4 saying stun gun. I've never used a stun gun, I've
5	hold her down.	5 never seen a stun gun. I don't know why they keep
6	Q. All right. And where in the right arm? Did you hit	6 saying stun gun. It's different than the Taser.
7	him like in the back by the elbow?	7 MR. WEGLARZ: Let's mark that. This will be
8	A. I remember seeing it on here. I think it was the elbow	8 6 and that will be 7. And 8 and 9.
9	area.	9 (At 11:34 a.m., Exhibits 5 through 9 marked)
10	Q. Did you see the medical examiner's report?	10 BY MR. WEGLARZ:
11	A. I did. I haven't seen it in quite a while I think,	11 Q. Okay. And, Officer Robinson, I'm also going to show
12	though.	12 you Exhibit 6, which is a photo of Mr. Kapuscinski's
13	Q. Do you recall the medical examiner describing a wound	13 right arm taken by the medical examiner. And you see
14	or stun gun wounds to the back of the right arm?	14 the wound on the right elbow there?
15	A. Do you have a copy of that there?	15 A. Probably this thing here you're thinking?
16	Q. I do, I do.	16 Q. There's two wounds -- they look like two wounds to
17	A. I don't know if it's in the state police one here.	17 me -- and so my question is, I'm just interested in the
18	Okay. I think I might have something here. Probably	18 general area of these two wounds below the right elbow.
19	the same one you have. Wayne County medical examiner	19 Is that your understanding as to where in general your
20	post mortem report.	20 dart landed after you deployed the Taser?
21	Q. Yes. Do you have it? You can look through mine.	21 A. Yes.
22	MR. WEGLARZ: We'll go off the record for a	22 Q. Okay. Can you tell me which of these two wound marks
23	second.	23 would be from your dart?
24	(At 11:30 a.m., discussion held off the	24 A. I cannot.
25	record)	25 Q. Okay. Do you believe both of those wound marks were

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	Page 73	Page 75
1	caused by the dart?	
2	<b>A.</b> No.	1      Mr. Kapuscinski, correct?
3	Q. Okay. Do you think both of those wound marks were	2 <b>A.</b> Originally, yes.
4	caused by both darts?	3      Q. And once you fire that Taser, that's -- it's already
5	<b>A.</b> Were both -- no. I only had one dart in him throughout	4      activated, correct?
6	his whole body.	5 <b>A.</b> Correct.
7	Q. Okay. Did the other dart strike Mr. Kapuscinski at	6      Q. There's going to be an electrical charge going through
8	all?	7      those wires, correct?
9	<b>A.</b> I don't think so. I don't believe I ever had a	8 <b>A.</b> Yes.
10	completed circuit on him. I think I had just one dart	9      Q. And how long does that charge go on for?
11	in him.	10 <b>A.</b> Five seconds with one trigger pull.
12	Q. Where did the other dart go?	11     Q. And then if you want to activate it again, you have to
13	<b>A.</b> I have no idea.	12     do another trigger pull.
14	Q. Did it hit the female?	13 <b>A.</b> Correct.
15	<b>A.</b> I think that's what Mitchell told me on scene, it might	14     Q. And that will also go for five seconds?
16	have hit him or I only had one dart in.	15 <b>A.</b> Correct.
17	Q. Did Mr. Kapuscinski react at all to being hit with the	16     Q. Do you have to keep your finger on the trigger the
18	dart in the Taser?	17     entire five seconds, or just one pull and you get five
19	<b>A.</b> Once I deployed, there was some sort of reaction	18     seconds automatically?
20	between both of them and they separated, and then my	19 <b>A.</b> Just one pull is five seconds. If you keep your finger
21	Taser was completely useless the second after they	20     on it, it will continuously go until the battery dies.
22	separated.	21     Q. Okay. And based upon what you saw, you see the darts
23	Q. And why do you think -- strike that. When the dart	22     being deployed, you thought both darts hit him, you did
24	struck Mr. Kapuscinski at that time, did you think that	23     see the two of them split apart, right, right after you
25	you hit him with only one dart, or did you think you	24     hit him with the darts?
	Page 74	Page 76
1	hit him with both?	1      connection. Within that first second or so, I knew
2	<b>A.</b> I thought I had a good connection. I thought I had two	2      there was no connection because it wasn't working.
3	darts.	3      Q. How did you know that?
4	Q. Sure.	4      A. Because he -- he wasn't just laying still. He started
5	<b>A.</b> They separated, and then I knew, you know, he's still	5      to move, progressed towards us, the officers. When I
6	moving, there's no connection.	6      say us, me and Mitchell.
7	Q. Okay.	7      Q. Sure. But they split apart how soon after you hit
8	<b>A.</b> I've been tasered, and you can't just start moving and	8      Mr. Kapuscinski with the dart?
9	standing, doing anything.	9 <b>A.</b> Very quickly.
10	Q. Okay. And how you're trained to deploy these Tasers,	10     Q. Split second, fair to say?
11	you line the laser up to where you want it to go, and	11 <b>A.</b> Probably.
12	while looking at that target, you then deploy it, and	12     Q. And why do you think that happened?
13	you watch the darts deploy and hit the target or	13 <b>A.</b> Either -- either I got one in him and one in her and
14	hopefully hit the target, correct?	14     they completed the circuit and then they broke apart
15	<b>A.</b> Well, the training's a lot different than something	15     for a second and and then the circuit stopped, or I
16	like this where we walk in and he's killing her, and I	16     have one in him and it scared him and he let go and she
17	didn't really have a, hey, I'm going to slow down and	17     was able to get free and run to safety.
18	point it at a target. It was a split second, I need to	18     Q. Did you ever figure out if you actually hit her or if
19	do something here, pulled the Taser out, deployed.	19     she was tased herself?
20	Training is just, hey, here's a picture of a guy, take	20 <b>A.</b> No.
21	your time and shoot at it.	21     Q. Did anyone ever ask her that?
22	Q. But you never took your eyes off of him.	22 <b>A.</b> I don't know.
23	<b>A.</b> No.	23     Q. Officer Mitchell thought you hit her, right?
24	Q. Based upon what you saw, you -- you were under the	24 <b>A.</b> I think he said that, yeah.
25	belief and understanding that both darts did hit	25     Q. He said that to you while at the scene.

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1 A.	I think so. I remember him saying, "You only have one dart in him."	1 A. No. Again, seconds. I don't know, though.
2 Q.	So you even knew after the first firing within that first five seconds, you knew that you didn't have an effective hit, correct?	2 Q. And he falls off the bed and lands on the floor?
3 A.	I knew something wasn't working, yeah.	3 A. Yes.
4 Q.	But you pressed the trigger again, correct?	4 Q. And what is his position while on the floor?
5 A.	Correct.	5 A. I believe I was telling him to turn over, turn over, turn over, so my guess is --
6 Q.	And so why would you do that if you knew you didn't have the circuit complete?	6 MS. FORBUSH: Don't guess.
7 A.	I just don't know. I just -- probably the stress, pull again, not working, pull again, not working.	7 BY MR. WEGLARZ:
8 Q.	All right.	8 Q. What's your understanding as to how he was positioned on the floor?
9 A.	I remember pulling two more times at least.	9 A. I'm going to refer to my report here real quick.
10 Q.	But they split apart during the first five seconds of that tase.	10 Q. If that helps you.
11 A.	It wasn't five seconds. It was the first second and a half, two seconds, something like that.	11 A. Yeah, I don't have it listed here as how he fell, but I think I was telling him to turn over.
12 Q.	Okay. And when you saw that, you thought, wow, this is a successful tase, right?	12 Q. Do you recall Officer Mitchell saying that when he fell, he fell on his back, he landed on his back?
13 A.	Yeah, I thought it was working good.	13 A. I don't recall that.
14 Q.	Okay.	14 Q. Do you have any reason to disagree with that?
15 A.	Very briefly.	15 A. No. That probably goes with why I'm telling him to turn over.
16 Q.	So they split apart. She -- what does she do, jump off the bed and run out of the room? What does she do?	16 Q. And why would you be telling him to turn over if he's on his back?
17 A.		17 A. So I can put him on his face, handcuff him.
18 Q.		18 Q. You can't cuff him if he's lying on his back?
19 A.		19 A. We prefer to cuff facedown so you're not attacked.
	Page 78	Page 80
1 A.	Yeah, she -- I'm assuming --	1 Q. But if he's unable to move or for whatever reason he can't reposition himself, can you cuff him while he's on his back?
2	MS. FORBUSH: Don't assume.	2 A. If someone's unable, yeah.
3	THE WITNESS: Somehow she gets away, gets off the bed, and then leaves the room.	3 Q. And you start telling him to turn over, and you say that to him repeatedly, right, turn over, turn over?
4		4 A. I think so, yeah.
5 BY MR. WEGLARZ:		5 Q. And when you're telling him to turn over, he's on his back. He's not threatening you at that point, correct?
6 Q.	Okay. And how soon is she out of the room?	6 MS. FORBUSH: Object to the form.
7 A.	Within seconds.	7 THE WITNESS: I think he was like thrashing, moving around.
8 Q.	Okay. So she's out of the room even before that first five-second activation is done.	8 BY MR. WEGLARZ:
9 A.	I don't know on that.	9 Q. Is he thrashing because he was under the effect of the tase?
10 Q.	Within seconds of them splitting apart, she's out of the room.	10 A. No. You don't really thrash when you get tasered. You basically go stiff.
11 A.	Yeah. She doesn't stick around.	11 Q. You've listened to the audio from the police video, right?
12 Q.	And what happens to Mr. Kapuscinski when they split apart?	12 A. Only partial.
13 A.	He starts coming towards us, falls off the bed. I think I'm telling him to turn over or turn over, turn over, turn over.	13 Q. And do you recall hearing the tase -- the Tasers being deployed on the audio?
14 Q.	Let me stop you there, if it's okay.	14 A. I don't remember.
15 A.		15 Q. You don't recall hearing two tase sounds on that audio?
16 Q.	You said, "He starts coming at us, he falls off the bed." How soon after he's hit with the dart does he fall off the bed?	16 A. I don't recall, no.
17 A.	I don't know.	
18 Q.	Is it instantaneous?	

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1	Q. Do you recall hearing yourself yelling, "Turn over now, 2 turn over now," and then hearing the second tasing 3 sound?	1 MS. FORBUSH: It's freezing in here. 69 2 degrees? No wonder why we're freezing.
4	A. I just remember, "Turn over, turn over, turn over."	3 MR. WEGLARZ: That's a cold 69 too. I don't 4 think that's just the regular 69. I think that's 67.
5	Q. Okay. Did he ever listen to you?	5 BY MR. WEGLARZ:
6	A. No.	6 Q. How much time goes by from the time that he falls on 7 the ground and is on his back until the time that he's 8 now standing up?
7	Q. While you were telling him to turn over, what was he 8 doing?	9 A. I don't know.
9	A. He wasn't turning over.	10 Q. A second, 20 seconds, a minute?
10	Q. Was he still alive?	11 A. Definitely less than a minute.
11	A. Yes.	12 Q. Can you give me anything better than that or anything 13 more approximate than that?
12	Q. Was he still breathing?	14 A. I cannot.
13	A. Yes.	15 Q. Do you recall telling Mr. Kapuscinski, "Roll over now 16 or I'm going to tase you again"?
14	Q. He wasn't dead at this point because he -- you hit him 15 with the Taser dart in the back of the right arm, 16 correct?	17 A. I think that was on the audio.
17	A. Correct.	18 Q. And that's your voice, right?
18	Q. He's on his back. You're telling him to turn over and 19 he's not turning over, correct?	19 A. Yeah.
20	A. Correct.	20 Q. When you told Mr. Kapuscinski to "roll over now or I'm 21 going to tase you again," was this before he got back 22 up or after?
21	Q. And how are you -- where are you positioned at this 22 time?	23 A. It would have been before he got up.
23	A. In that circle that I drew.	24 Q. Do you know how soon after you give him that 25 instruction does he get back up?
24	Q. Okay. You're not over him trying to cuff him?	
25	A. I stayed in that circle.	
	Page 82	Page 84
1	Q. Do you still have the Taser in your hand?	1 A. I don't know.
2	A. I'm sure I do.	2 Q. When he's lying on his back, are his eyes open?
3	Q. Do you ever get closer to him than the position you've 4 described for us earlier in the diagram?	3 A. I don't recall specifically looking at his eyes at that 4 point.
5	A. I stayed on that wall, and he fell onto the ground and 6 then got back up and then went back down again. I 7 didn't get close enough to put handcuffs on him.	5 Q. Where do you think you would have been looking?
8	Q. You didn't put away your Taser until after Mitchell 9 tased him, fair to say?	6 A. I think he was moving, so his arms and legs.
10	A. Yeah.	7 Q. And do you recall where on the floor in the room he's 8 positioned?
11	Q. So Mr. Kapuscinski is hit by at least one dart. 12 Kapuscinski and the female split apart. The female 13 leaves the room. Mr. Kapuscinski falls on the ground 14 and is on his back, correct?	9 A. I do not.
15	A. Correct.	10 Q. Let's pull out that Exhibit Number 4.
16	Q. You then tell him, "Turn over now, turn over now," 17 correct?	11 A. Somewhere -- somewhere in this area.
18	A. Correct.	12 Q. Why don't you --
19	Q. When does Mr. Kapuscinski get back up? Does he get 20 back up after you tell him to turn over?	13 A. If I could use your pen.
21	A. Yes.	14 Q. Why don't you put an X to show where Mr. Kapuscinski is 15 lying on the floor on his back.
22	Q. Tell me about that.	16 A. Somewhere in this circle there.
23	A. He just stood back up. I told him to turn over so I 24 could handcuff him. He didn't listen to those commands 25 either and then stood back up.	17 Q. You put an X with a circle around it. And where would 18 his head be? Where is his head facing?
		19 A. I don't know on that. I'd be guessing.
		20 MS. FORBUSH: Don't guess.
		21 BY MR. WEGLARZ:
		22 Q. All right. You can't tell me if it was -- if his head 23 was closer to the bed there or if his head was --
		24 A. I couldn't guess. He was moving. These ones I was 25 very certain. These ones he is moving, so I don't

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1 know.	2 MS. McGIFFERT: And, I'm sorry, Officer	1 time that you pressed the trigger on your Taser, you
3 Robinson. You're saying these ones where you put the K	2 were -- you intended to charge Mr. Kapuscinski with	3 another tase, correct?
4 and the B --	4 MS. FORBUSH: Well, I'm going to object to	5 the form.
5 THE WITNESS: Yes.	6 MR. WEGLARZ: Noted.	7 THE WITNESS: When I was pulling the trigger
6 MS. McGIFFERT: -- you were more certain.	8 the additional times, it wasn't connected, so I know it	9 wasn't working, so that's probably why I kept pulling
7 THE WITNESS: I was certain with those.	10 it.	11 BY MR. WEGLARZ:
8 These ones I couldn't say.	12 Q. So you kept pulling it knowing it wasn't connected,	13 right?
9 MS. FORBUSH: Can we take a short restroom	14 A. Correct.	15 Q. And why would you do that?
10 break, please?	16 A. I would assume just the stress of the situation.	17 Q. What were you hoping would happen by pulling that
11 MR. WEGLARZ: Yeah, give me one second.	18 A. Don't know. I was hoping something would change, it	19 trigger?
12 MS. FORBUSH: It's been almost two hours.	20 would work.	21 Q. Are you familiar with a drive stun?
13 MR. WEGLARZ: Okay. That's fine.	22 A. Yes.	23 Q. What's a drive stun?
14 (At 11:52 a.m., recess taken)	24 A. It's where you take it and you make -- take the Taser	25 and make contact with that person.
15 (At 12:06 p.m., Exhibit 10 marked and back on		
16 the record)		
17 BY MR. WEGLARZ:		
18 Q. Now, Officer Robinson, I'm going to show you Exhibit		
19 Number 10. This is a page from the data report taken		
20 from your Taser. I'm assuming you've seen this before.		
21 A. I have not seen this.		
22 Q. Well, there's a lot of firsts in this deposition.		
23 You're seeing it now for the first time.		
24 MS. FORBUSH: Well, maybe you should ask him		
25 if he's ever seen a Taser data download before. Not		
Page 86		Page 88
1 just that one, but any one.	2	1 Q. That's where you can still give them a charge, right,
2 BY MR. WEGLARZ:	3	2 and you can give them a stun by physically placing the
3 Q. Well, based upon my understanding of this report and my	4	3 Taser up against the person's skin, right?
4 understanding of the sync that was done that you'll see	5 A. Correct.	5 Q. And if you wanted to do that, even though you didn't
5 at the end of the entries there, this data is telling	6	6 have the two darts connected, you could still do a stun
6 us that your Taser was fired four consecutive times for	7	7 drive, correct?
7 periods of five, six, five, and five seconds. Would	8 A. Correct.	8 Q. And what probes on your Taser would actually be
8 you have any reason to disagree with that?	9	9 delivering the stun? What part of your Taser would be
9 MS. FORBUSH: Object to foundation.	10	10 delivering that?
10 MS. McGIFFERT: I join.	11	11 MS. FORBUSH: Object to form. Go ahead.
11 THE WITNESS: I don't know. I don't know	12	12 THE WITNESS: If there was one barb in, that
12 anything about this. I don't know how to read it or	13	13 one would get -- that one would get it, and then the
13 anything.	14	14 additional two from the front of the Taser would get it
14 BY MR. WEGLARZ:	15	15 too.
15 Q. Sure. If that document is telling us that you fired	16	16 BY MR. WEGLARZ:
16 your Taser four separate times during your interaction	17	17 Q. And when you say the two from the front of the Taser,
17 with Mr. Kapuscinski, does that -- do you agree or	18	18 you're talking about -- what do they call those --
18 disagree with that?	19	19 electrodes?
19 A. That's probably not wrong. I know I fired once when I	20	20 A. I don't remember what they call them, but there's like
20 got the one probe on him, and I recall two more. But	21	21 two pieces of metal off the front.
21 maybe a third, an extra one then.	22	22 Q. And do you know the distance between those two pieces
22 Q. Okay. You wouldn't disagree with that if the data's	23	23 of metal?
23 showing that there were four firings total.	24	24 A. An inch or so, 2 inches maybe.
24 A. I would not disagree.	25	
25 Q. Okay. And when you were pressing the trigger, each		

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Page 89		Page 91
1 Q.	And so what you can do is you can still fire and do	1 Mitchell?
2 drive stuns even if you don't have the other probes --		2 A. Could you say the question again?
3 A. You could.		3 MS. FORBUSH: If you need to look at the
4 Q. -- inserted. Okay. In fact, if you have one probe		4 report, look at the report.
5 inserted and you do a drive stun, you're really doing		5 THE WITNESS: Okay. I'm on the timeline now.
6 another tase, right, because that completes the		6 What was your question on the timeline?
7 circuit?		7 BY MR. WEGLARZ:
8 A. It would complete the circuit, yep.		8 Q. My question was with respect to the second Taser, the
9 Q. Have you ever been taught that you can also deploy the		9 second tasing sound that's in that timeline, that
10 darts real close range and then do a drive stun further		10 that's referring to Officer Mitchell's Taser.
11 away from the dart deployment?		11 A. I don't know if they're referring. It is listed at 4
12 A. Yes.		12 minutes, 12 seconds in the audio, second Taser
13 Q. Okay. Have you ever done that before?		13 deployment.
14 A. I have not.		14 Q. Are we going to hear more than one Taser deployment
15 Q. When you deployed the darts on Mr. Kapuscinski, did you		15 from your Taser?
16 do a real close range deployment?		16 MS. FORBUSH: Object to foundation.
17 A. No. I was standing at the distance we discussed		17 BY MR. WEGLARZ:
18 earlier.		18 Q. Go ahead.
19 Q. Do you believe you drive-stunned Mr. Kapuscinski?		19 A. I did pull the trigger. Like myself, I recall three
20 A. I did not.		20 times. This report shows four. I don't know what the
21 Q. And you never took your Taser and applied it to him to		21 audio has.
22 try to stun him?		22 Q. Okay. But even after you shoot the darts, if you pull
23 A. I did not.		23 the trigger subsequent to that, you're going to hear
24 Q. Did your Taser ever touch Mr. Kapuscinski other than		24 the exact same sound that you hear --
25 the dart making contact as you testified?		25 A. No. They're -- maybe you're referring to that first
Page 90		Page 92
1 A. I don't think so.		1 like that blast maybe?
2 Q. Did anyone drive stun Mr. Kapuscinski?		2 Q. Yes.
3 A. No.		3 A. Okay. Yeah, mine would only make one blast.
4 Q. Did Officer Mitchell?		4 Q. And that's all you recall hearing during this
5 A. He did not.		5 interaction, a blast from your Taser and then one blast
6 Q. How soon after you deploy your Taser does Officer		6 from Mitchell's Taser, correct?
7 Mitchell deploy his Taser?		7 A. I don't ever recall hearing the blast.
8 A. I don't know.		8 Q. Would it be dangerous to drive stun someone in the
9 Q. Seconds, minutes?		9 chest area?
10 A. Less -- I would assume -- I don't know. Less than a		10 MS. FORBUSH: Object to form, foundation.
11 minute.		11 THE WITNESS: That would probably not be the
12 Q. And do you recall hearing Officer Mitchell's Taser		12 preferred target zone.
13 being deployed on the audio from the police video?		13 BY MR. WEGLARZ:
14 A. I don't recall hearing that.		14 Q. And why not?
15 Q. You understand, though, that -- I think even the state		15 MS. MCGIFFERT: Object as to foundation.
16 police, they made a timeline from that audio. Are you		16 THE WITNESS: Dart to heart, which we've
17 aware of that?		17 discussed at the beginning.
18 A. Yes.		18 BY MR. WEGLARZ:
19 Q. And do you know they have a time entry for the first		19 Q. When Officer Mitchell deployed his Taser, did you see
20 tase sound and the second tase sound?		20 where his laser was pointed?
21 A. Yes, there is.		21 A. I did not.
22 Q. Okay.		22 Q. Did Officer Mitchell's Taser hit Mr. Kapuscinski?
23 A. I don't know what it is, though.		23 A. It did.
24 Q. Is it your understanding that the second tase sound		24 Q. Where?
25 reflects the time -- or reflects the Taser from Officer		25 A. Left -- upper left chest and lower right abdomen.

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1 Q. And when Officer Mitchell deployed his Taser, did it 2 seem to take effect?	1 this the general area where you saw the other barb hit 2 from Officer Mitchell?
3 A. Yeah, he went down. Straight down. He was attempting 4 to stand, he got tasered.	3 A. I didn't see it hit there, but I remember when I was 4 doing CPR, my hands were here. I remember -- 5 MS. FORBUSH: You're gesturing. Can you say 6 where you're --
5 Q. And was he standing when he was tased by Officer 6 Mitchell?	7 THE WITNESS: I'm pointing right in the 8 middle of his chest at his sternum.
7 A. I don't think he was all the way up. He was attempting 8 to stand up and --	9 BY MR. WEGLARZ:
9 Q. So describe the position that Kapuscinski is in when 10 he's hit by Mitchell's Taser.	10 Q. Yes.
11 A. I don't really have a memory of how close he was to the 12 ground or standing up completely.	11 A. So I was doing CPR. There was a probe above and a 12 probe below.
13 Q. He was in the process of standing up?	13 Q. Okay. And the probe above was in the area of the 14 tattoo that we just described, correct?
14 A. Yes.	15 A. Yes.
15 Q. He was at least midway to the floor, if not higher?	16 Q. And the probe below is in the area of these wounds that 17 we see on the lower right abdominal.
16 A. I don't know.	18 A. Correct.
17 Q. Were his knees bent?	19 Q. And when you were doing CPR, was there a third probe?
18 A. I don't recall.	20 A. I think that's when Officer Mitchell told me I only had 21 one in him, but I don't remember seeing it.
19 Q. Were you still pressing the trigger on your Taser when 20 Mitchell tased him?	22 Q. Looking at Exhibit 8 again, you see a wound in the 23 middle of the chest there just below the sternum?
21 A. I don't recall.	24 A. Yep.
22 Q. Do you think that most likely happened?	25 Q. And then you see that faint wound --
23 A. I have no idea.	
24 Q. And what would happen if you only have one barb in 25 Mr. Kapuscinski, but now we have Mitchell with two	
Page 94	Page 96
1 barbs in him? If you press the trigger, will 2 Mr. Kapuscinski feel your tase?	1 A. Yep.
3 A. I would assume he wouldn't get anything. There's no 4 circuit completed.	2 Q. -- underneath it? Any idea what that is?
5 Q. What if your barb or the wire to your barb is in 6 contact with either of Mitchell's barbs or wires? 7 Would that complete the circuit?	3 A. I have no idea.
8 MS. FORBUSH: Object to foundation.	4 Q. Would that be consistent with a drive stun?
9 MS. McGIFFERT: Join.	5 A. No, I don't think so. Nobody had given a drive stun, 6 so I don't know how he would get one.
10 THE WITNESS: I don't know.	7 Q. Is it possible the two darts landed in the upper left 8 chest and then he was drive-stunned?
11 BY MR. WEGLARZ:	9 A. Is it possible my darts or --
12 Q. I'm going to show you Exhibit Number 8. It's a photo 13 of Mr. Kapuscinski, post-incident of course. Now, you 14 observed Mitchell's barbs -- when you said the upper 15 left chest, are you talking this area here?	10 Q. Mitchell's.
16 A. Yep.	11 A. -- Officer Mitchell's?
17 Q. These wounds that we see by this tattoo?	12 Q. Yeah.
18 MS. FORBUSH: Object to the form.	13 A. No.
19 THE WITNESS: It would only be one. It looks 20 like maybe two or three --	14 Q. How far away was Mitchell when he deployed his Taser?
21 BY MR. WEGLARZ:	15 A. I don't know. I mean, you see how big the room was. 16 He was somewhere off to my left.
22 Q. Sure.	17 Q. Was he just a couple feet away, 6 feet away, 8 feet 18 away?
23 A. -- so it would be something up here.	19 MS. FORBUSH: Lack of foundation. He said he 20 didn't know.
24 Q. All right. And then we also see a wound or set of 25 wounds on the lower right abdominal area there. Is	21 THE WITNESS: I don't know.
	22 BY MR. WEGLARZ:
	23 Q. Was he still in that circle that you diagrammed for us?
	24 A. I don't know where he was when he -- he was somewhere 25 to my left, but I don't know where he was.

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	Page 97	Page 99
1	Q. So he could have been outside of that circle.	1 A. I don't recall.
2	A. Could have been, yeah.	2 Q. Did he ever threaten you physically nonverbally?
3	Q. Was he closer to Mr. Kapuscinski than he was before	3 A. He was getting back up. I would assume he was trying
4	when he deployed the Taser?	4 to kill his girlfriend. Now she's gone, he's still
5	MS. FORBUSH: Object to form, foundation.	5 coming towards us. I take that as a threat.
6	THE WITNESS: He only deployed it once.	6 Q. And is that the reason why you continued to press the
7	BY MR. WEGLARZ:	7 trigger on your Taser?
8	Q. Right.	8 A. I continued to press it under stress and knowing it
9	A. I don't know if he -- actually, can you go ahead and do	9 wasn't working and just being in stress. Pull, pull,
10	the question again?	10 pull, nothing's happening at all.
11	Q. Sure. Did he actually get closer to Mr. Kapuscinski	11 Q. But each time that you pulled, you pulled because you
12	when he deployed his Taser, closer than he was before?	12 were hoping to tase him with it, right?
13	A. Oh, I don't know.	13 A. Correct, and it didn't work any of the times.
14	Q. Were you surprised that Officer Mitchell tased	14 Q. If your Taser was working during those times, would you
15	Mr. Kapuscinski?	15 agree that it would be excessive force to have
16	A. No.	16 Mitchell's Taser get involved?
17	Q. Did you ask him to?	17 A. If I would have -- if mine would have been working, he
18	A. I did not. I didn't have to.	18 wouldn't have had to. He would have been down on the
19	Q. Is it an appropriate use of force to tase someone for	19 ground.
20	not rolling over for you?	20 Q. And if -- if Mr. Kapuscinski was being drive-stunned,
21	MS. FORBUSH: Object to form.	21 it would be excessive force to get Mitchell's Taser
22	THE WITNESS: Strictly just not rolling over?	22 involved, would you agree?
23	BY MR. WEGLARZ:	23 A. If he was drive force?
24	Q. Yes.	24 Q. Drive-stunned.
25	A. Probably not.	25 MS. FORBUSH: Do you mean if Robinson was
	Page 98	Page 100
1	Q. That would be excessive, correct?	1 drive-stunning him?
2	A. Could be, yeah.	2 MR. WEGLARZ: Yes.
3	Q. And when you listened to the audio to the scout video,	3 MS. FORBUSH: Okay.
4	did you hear you or Officer Mitchell ever say that	4 THE WITNESS: If mine was working and then he
5	Mr. Kapuscinski was threatening you?	5 got involved?
6	MS. FORBUSH: Object to form.	6 BY MR. WEGLARZ:
7	THE WITNESS: I don't recall that.	7 Q. Yes.
8	BY MR. WEGLARZ:	8 A. That would have been probably -- there would be no
9	Q. Would you agree with me that Mr. Kapuscinski never	9 reason to do that.
10	threatened you?	10 Q. And if you would have drive-stunned, it would have
11	MS. FORBUSH: Verbally? I'm just trying to	11 tased him because you still had one probe in him,
12	clarify.	12 correct?
13	MR. WEGLARZ: Yeah. No, you're trying to	13 A. Correct.
14	testify, but that's all right. Clarify and testify.	14 Q. It would have worked like a regular tase.
15	BY MR. WEGLARZ:	15 A. Correct. I just didn't want to get that close to him.
16	Q. You agree with me Mr. Kapuscinski never threatened you.	16 Q. And the reason why tasing went on beyond your initial
17	A. Verbally he did not.	17 deployment was because he started to get back up and
18	Q. Well, how did you know to say verbally? I'm just	18 you guys felt threatened.
19	curious.	19 MS. MCGIFFERT: Object as to form,
20	A. Well, he wasn't listening to my commands, he was still	20 foundation.
21	progressing towards us. We told him to stay down or	21 MS. FORBUSH: Join.
22	get off of her, which he didn't do, roll over, which he	22 THE WITNESS: Well, he wasn't getting
23	didn't do, so he never listened to any commands.	23 tasered. I was pulling the trigger, but he wasn't --
24	Q. Yeah. After he was hit with your dart, he never said	24 no charge was delivered to him with just one probe.
25	anything again after that, did he?	25 BY MR. WEGLARZ:

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1	Q. But he was tased by Officer Mitchell.	1 Q. And did you do that?
2	A. He was.	2 A. Officer Mitchell left the apartment to go get his mask,
3	Q. And the reason for that was because he tried to get	3 and I started chest compressions. I think that was
4	back up and --	4 right when a Trenton police officer walked in.
5	A. I assume to assault us.	5 Q. Did you check his vitals after he was tased?
6	Q. Why didn't you drive stun him if your Taser wasn't	6 A. We were monitoring him. He went down, he wasn't
7	working?	7 responding to his name. I had to figure out what his
8	A. I didn't want to get close to him.	8 name was. He wasn't responding. I put him like into
9	Q. And why?	9 like a recovery on a side position. Rubbed his sternum
10	A. Well, I seen that he was trying to kill the girlfriend.	10 to try to, you know, wake him or see if he was, you
11	Q. Yeah.	11 know, faking. He didn't respond to either of those.
12	A. I would assume that he wasn't going to shake my hand.	12 I checked his pulse. I think Officer
13	He was going assault me, you know, maybe choke me or	13 Mitchell said, "Hey, I don't think he's breathing," and
14	take my weapon, my firearm, so try to keep some sort of	14 I think then I checked his pulse. He had a pulse.
15	distance if I can.	15 Probably shortly after then, Officer Mitchell went and
16	Q. Why not draw your firearm?	16 got a mask. Checked -- I'm sure I checked his pulse
17	A. I just didn't.	17 again because then I started CPR.
18	Q. Right. Because the Taser wasn't working --	18 Q. When did you first check for a pulse or his
19	A. Yep.	19 respirations?
20	Q. -- so why not use the firearm, especially when you	20 A. You want me to look at the timeline for the state
21	thought he was now going to physically harm you?	21 police or just --
22	A. I don't have an answer.	22 Q. I don't know if the timeline from the state police
23	Q. Did anyone ask you about these other wounds on	23 gives it, but --
24	Mr. Kapuscinski's body and question you about where you	24 A. I think it had something on there.
25	deployed your Taser?	25 Q. Would you have checked it right after he was tased?
	Page 102	Page 104
1	A. I don't think so.	1 A. No.
2	Q. Did anyone ask you how far away you were from	2 Q. And why not?
3	Mr. Kapuscinski or where did the probes land?	3 A. You wouldn't suspect that. You'd have to check that.
4	A. No.	4 You wouldn't --
5	Q. Did you ever find the other probe?	5 Q. When Mr. Kapuscinski was tased by Officer Mitchell, he
6	A. No.	6 was hit with, what, a five-second charge?
7	Q. Did you look for it?	7 A. I don't know how long. I would assume he got five
8	A. I don't think so.	8 seconds, but I don't know. I haven't seen their data
9	Q. In the audio someone is telling Dispatch 15, "We're	9 either.
10	secure now." What does that mean?	10 Q. Was he hit -- do you know if the trigger was pressed
11	A. Our station is Station 15, so I don't know if that was	11 more than once?
12	me or Officer Mitchell saying 15 -- "Station 15, we're	12 A. I think it was just once.
13	secure."	13 Q. And it took immediate effect, right?
14	Q. And 15 represents what?	14 A. Yes.
15	A. Gibraltar Police Department.	15 Q. And he didn't respond after that, did he?
16	Q. And what is a trained police officer like yourself	16 A. No.
17	supposed to do if after someone is tased they are no	17 Q. Did you ever check his breathing to see if he was even
18	longer breathing?	18 breathing?
19	A. Provide assistance, medical assistance.	19 A. Yeah. Officer Mitchell -- well, he was breathing. We
20	Q. Which would be what?	20 didn't see anything originally. I put him onto his
21	A. If they're not breathing, CPR.	21 side, like I said, just trying to make sure that he's
22	Q. And how would you carry that out?	22 awake. I didn't know if he was trying to play possum.
23	A. I would like to have a rescue mask or a -- it's called	23 Did the sternum rub. That wasn't working, and that's
24	a BVM, some sort of device to give breaths, and then	24 when we turned him over and Officer Mitchell said,
25	compressions on the chest.	25 "Hey, I don't think he's breathing." That's when I

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	Page 105	Page 107
1	checked his pulse.	1 Q. So after you cuffed him, you basically left him in the
2 Q.	Officer Mitchell mentioned that he didn't think he was	2 chest-down position for a period of time before you
3	breathing in conjunction with what? What event? What,	3 came back to put him in the recovery position, right?
4	if anything, happened? You turned him over?	4 MS. FORBUSH: Object to form.
5 A.	I must have, yeah.	5 THE WITNESS: I never left him. I was
6 Q.	Turned him over from what to what?	6 standing --
7 A.	He was laying on his side. I don't know which side.	7 BY MR. WEGLARZ:
8	But I had him in like a recovery where you put him on	8 Q. Right. You were next to him, but he remained in the
9 his side, put a leg out so they're not facedown. I	9 chest-down position.	
10	think they call it positional asphyxiation. I just	10 A. Yes, briefly. I don't know how long that would have
11	made sure he wasn't resting on his chest completely.	11 been, though.
12 Q.	Before you put him in the recovery position, I take it	12 Q. And after you cuffed him, did you check his
13	you handcuffed him?	13 respirations or pulse?
14 A.	I did.	14 A. I do remember Mitchell just saying, "Hey, I don't think
15 Q.	Did you cuff him right after Mitchell tased him?	15 he's breathing," after I had him.
16 A.	Yes.	16 Q. That was a while later, right?
17 Q.	All right. And what position was Mr. Kapuscinski in	17 A. Yeah, I don't know what the timeline was on that.
18	before you went to go cuff him?	18 Q. I'm talking about right after you cuffed him, did you
19 A.	I think he was on -- I think he was on his back and I	19 check for respirations or a pulse?
20	had to roll him. I started to handcuff and then roll	20 A. No.
21	him.	21 Q. And you know how to check for that, right?
22 Q.	And you rolled him onto his stomach?	22 A. Correct.
23 A.	Yes.	23 Q. You were an EMT back then?
24 Q.	And then you cuffed him?	24 A. Correct.
25 A.	It was kind of all in the same motion.	25 Q. When was the first time you checked his respirations or
	Page 106	Page 108
1 Q.	And then once you cuffed him, what position did you	1 pulse?
2	leave him in?	2 A. Whenever Officer Mitchell said, "Hey, I don't think
3 A.	I think that's right when I put him -- I think he was	3 he's breathing."
4	probably chest down, and then I moved him into the	4 Q. And that was?
5	recovery at that point after that.	5 A. That's the first time I physically, but as he was
6 Q.	Okay. How long did you leave him in the chest-down	6 laying there, originally he was facedown, I didn't see
7	position?	7 any issues. Everything looked normal. It looked like,
8 A.	Oh, I don't know.	8 you know, his chest was -- or his chest wouldn't have
9 Q.	He was still in the chest-down position when the	9 been moving, but his back was coming up and down.
10	Trenton PD arrived?	10 Q. And where do you see that? What report is that in?
11 A.	No. I was already doing CPR I believe.	11 A. No, that's just what I remember from my head.
12 Q.	Did you look at any of the Trenton PD records?	12 Q. Oh. Are you looking at a report? Because I thought
13 A.	Pardon?	13 you were reading it.
14 Q.	Did you look at any of the Trenton PD records?	14 A. Nope. This is the state police one and this one's --
15 A.	No. I think there is a report around here. I haven't	15 Q. Sure.
16	read it, though.	16 A. -- Exhibit 3, Robinson.
17 Q.	Do you remember us talking about it the last deposition	17 Q. But eventually you did check his pulse and
18	that one of them thought that Mr. Kapuscinski was on	18 respirations, right?
19	his back and wasn't breathing when he walked in?	19 A. Yes.
20 A.	I do remember you talking about it. I don't remember,	20 Q. Okay. And that was when Mitchell said, "Hey, I don't
21	you know, specifics on it.	21 think he's breathing."
22 Q.	So is it likely that CPR really wasn't started until	22 A. Correct.
23	after the Trenton PD arrived?	23 Q. And that was right after you rolled him from the
24 A.	No, I think I was doing it. As the officer walked in,	24 chest-down position.
25	I was doing CPR I think already.	25 MS. FORBUSH: Object to form.

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1	THE WITNESS: I don't know if it was right	1 safe, my partner's safe, the girl he was trying to kill
2 after.		2 is safe, then maybe some of those things start coming
3 BY MR. WEGLARZ:		3 along.
4 Q. Around that time.		4 Q. Sure, sure. And, of course, your primary position is
5 A. It was after, yep.		5 being a police officer, but the department requires you
6 Q. Well after? Minutes?		6 to be a licensed EMT.
7 A. Oh, I don't know.		7 A. Yeah.
8 Q. And when you checked his respirations, were they zero?		8 Q. Because they know you're going to use those skills out
9 A. I don't recall. I just remember him saying, "Hey, it		9 in the field, correct?
10 doesn't look like he's breathing," so I immediately		10 A. Correct.
11 just went for a pulse. I think it was on the right		11 Q. And I take it in the Taser trainings they teach you
12 side of his neck.		12 that if you use this Taser on people, sometimes you may
13 Q. And what was his pulse?		13 have to give some first aid, correct?
14 A. It felt like a normal pulse.		14 A. You could.
15 Q. And a normal pulse is what?		15 Q. Right. And so you better be ready to do it because
16 A. Maybe 60 to 80 beats --		16 when you tase someone, they may require first aid after
17 Q. And he had a 60 to 80 beat pulse at that time?		17 that, correct?
18 A. Yeah. It didn't feel like it was crazy at that point.		18 A. The first aid I think they believe is just, you know,
19 Q. Did it ever get crazy?		19 CPR.
20 A. That's the only time, you know, I checked it. It felt		20 Q. Yep. And CPR being the very first thing that you can
21 normal. I didn't check it before when he was screaming		21 do for somebody, correct?
22 or anything.		22 A. Correct.
23 Q. Do you guys have an AED?		23 Q. And if you see someone who's not responsive after being
24 A. I have one in my car.		24 tased, that's one of the things you have to be thinking
25 Q. So if he needed to use that, you could have -- well, do		25 about, maybe you have to start giving CPR.
Page 110		Page 112
1	you even know how to use an AED?	1 A. Which we did.
2 A. Yes.		2 Q. Did Officer Mitchell appear under the influence of
3 Q. And when are you supposed to use an AED?		3 alcohol?
4 A. Probably heart arrhythmia.		4 A. He did not.
5 Q. Well, how would you know if someone's walking around		5 Q. Do you know why they give him a breathalyzer?
6 with a heart arrhythmia?		6 A. I do not.
7 A. I guess you wouldn't.		7 Q. What were the results of your breathalyzer?
8 Q. If someone has a respiratory arrest, then you apply it		8 A. I did not take one.
9 to see if it tells you to use it, correct?		9 Q. Did you refuse?
10 A. Well, you could, yeah.		10 A. I was not offered one.
11 Q. And don't they tell you in these tasing trainings that		11 Q. Do you feel kind of slighted that they only offered him
12 you have that once you tase someone you should check		12 the breathalyzer but not you?
13 them to make sure that they're still okay?		13 A. Not at all.
14 A. I believe they say monitor, yeah.		14 Q. Have you ever heard of that, where they're giving
15 Q. Look for their vital signs, check their vital signs,		15 breathalyzers to officers right after a run?
16 correct?		16 A. I've heard of critical incidents people getting, you
17 A. I don't know if it says check vitals. I think it says		17 know, tested, make sure they're not -- usually they're
18 monitor. I know when we do voluntary exposures, you		18 driving, but I don't know.
19 know, keep a buddy with you to monitor them. It seems		19 Q. Would this be a first for you hearing that that
20 like monitor keeps coming up.		20 happened in this case?
21 Q. As an EMT if you have someone who's been tased and is		21 A. I heard about it last -- a couple three weeks ago.
22 not responsive, one of the first things you're going to		22 Q. That's the first time you heard of that.
23 do is check the vital signs, right?		23 A. I think so.
24 A. You would eventually. You know, my primary position is		24 Q. Do you know if Officer Mitchell was consuming alcohol
25 a police officer, so once I'm making sure that I'm		25 within the 24 hours before this incident?

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	Page 113	Page 115
1 A.	I have no idea.	1 Q. Now, I want you to assume that the audio shows that
2 Q.	When you were at this scene, you believed that	2 about 4 minutes and 12 seconds into the video we hear
3	Mr. Kapuscinski defecated on himself, true?	3 the second Taser sound.
4 A.	Originally I did. Or not on himself. Just I saw the	4 A. Okay.
5 pile, I thought maybe something --		5 Q. And then eight seconds later we hear you saying, "Roll
6 Q.	You thought it was him.	6 over now" or "I'm going to tase you again." Do you
7 A.	Yeah.	7 have any idea as to what you're referring to there?
8 Q.	After he was tased.	8 A. Officer Mitchell tasered him, he went down. He must
9 A.	No, I thought -- I thought he did that before we got	9 have been on his back. Then I started handcuffing
10 there, like used the room as a bathroom.		10 because he wasn't thrashing like he was before.
11 Q.	Do you recall the audio from the video where it's	11 Q. Well, did he roll over for you?
12 either you or Mitchell you can hear, "Did he shit		12 A. No.
13 himself?"		13 Q. So how did you get him?
14 A.	Probably because maybe he fell into it or something, so	14 A. I just grabbed an arm.
15 I don't know.		15 Q. You just rolled him over?
16 Q.	But do you recall that being said?	16 A. Yeah.
17 A.	Yes.	17 Q. Wasn't that hard, was it?
18 Q.	Was that you?	18 A. I don't know.
19 A.	Yes.	19 Q. You were able to do it without having to tase him,
20 Q.	And then right after, you say, "He fucking shit himself	20 right?
21 there." Do you remember that?		21 A. Correct.
22 A.	Yes, but I think I was referring to -- it was there	22 Q. When did you first talk to the mom?
23 before we came in. The feces was in the room before we		23 A. The mom? I don't know if I talked to anyone's mom.
24 came in, so I don't know if that was something that		24 MS. FORBUSH: Are you talking about
25 they were doing before we were even called.		25 Ms. Beneteau?
	Page 114	Page 116
1 Q.	But at the scene, you thought the feces were from him.	1 BY MR. WEGLARZ:
2 A.	I did originally. Later on I talked to the girl and	2 Q. Yeah, sorry.
3 found out it was from her while still at the scene.		3 A. Oh, I don't know if it's on this audio here. You want
4 This was after I think they took him.		4 me to look at this? It would have been after -- it
5 Q.	According to the scout car video, it's not until right	5 would have probably been after the fire department took
6 after the Trenton PD come on the scene that there's now		6 Kapuscinski. Or maybe during going, "Hey, what's his
7 a mention that he's not breathing.		7 name?" I think I was yelling, "Hey, what's his name,
8 A.	Okay.	8 what's his name?" So somebody told me his name. I
9 Q.	Does that seem to jive with your recollection?	9 guess it was David.
10 A.	When they were on scene or --	10 Q. Did she appear injured at all to you?
11 Q.	Yep.	11 A. She had a couple bruises. I think there was bruises on
12 A.	-- when they were in the apartment? I don't know.	12 her face, but I remember asking her if she was okay.
13 Because I would assume once they got there, it would		13 "Yeah, I'm okay." She was very calm, which was very
14 take them --		14 odd. She minimized any sort of injuries that she did
15 Q.	It's a few seconds to get in.	15 have.
16 A.	I don't know if the door was open or someone had to let	16 Q. Okay. Now, someone mentioned that she had to be taken
17 them in or --		17 to the hospital for something to get a surgery or to
18 Q.	But do you recall no one's really even mentioning or	18 get something done?
19 discussing or even thinking that he's not able to		19 A. Yep.
20 breathe until after the Trenton PD arrive?		20 Q. What was that?
21 A.	No, I think that was before. The Trenton PD wasn't in	21 A. I'm kind of just going off what I heard. I don't know
22 the room when Officer Mitchell mentioned that, and at		22 if this is in here at all, but apparently she was, you
23 that point I think we'd already called for -- or he		23 know, like ripped from her anus up from when he was
24 called for our fire department, and then I may have		24 taking the feces out of her anus with his -- both his
25 called for Brownstown somewhere in there.		25 hands, so I believe she needed some stitches. And they

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1      took her to the hospital, and as I recall, she just	1      else? Anything, whether it's a Taser, whether it's	
2      left the hospital. She didn't want to have the surgery	2      something from CPR, whatever. Whatever the cause of	
3      done.	3      the source.	
4      Q. Who took her to the hospital for that?	4      A. I don't know -- I mean, I'm looking at some of these	
5      A. I don't know.	5      pictures here. I have no clue.	
6      Q. It was a police officer, right?	6      Q. Okay.	
7      A. I have no idea.	7      A. No guess.	
8      Q. How did you hear about this?	8      Q. Would you agree that when you arrived on the scene, it	
9      A. I was secluded, but I could just -- you know, I could	9      caused the little girl to really become frightened and	
10     hear people, "All right, we're taking her, she's doing	10     panicky?	
11     this."	11     A. I don't know what caused her. I assume listening to	
12     Q. You talked to her about what happened, right?	12     mom and boyfriend go at it probably worked her up.	
13     A. Yes.	13     Q. You didn't hear her screaming before you knocked on the	
14     Q. Did she tell you that --	14     door, did you?	
15     A. She did not.	15     A. I don't think so.	
16     Q. -- that happened to her?	16     Q. And do you recall -- I think it's the little girl --	
17     A. She told me that he took both his hands or fists, put	17     did the boy ever come inside during this interaction?	
18     them in her anus, took the feces out and threw it on	18     A. I don't know. I don't know where he was at.	
19     the ground, but she never mentioned that she was -- had	19     Q. Do you recall the little girl asking for the police not	
20     anal tearing or ripping.	20     to kill him?	
21     Q. All right. And, of course, when you are at the scene	21     A. I do not.	
22     before the tasing, you didn't know about this, right?	22     Q. Do you recall the child asking how long she'll be taken	
23     A. I didn't know that he had brutally raped her or any of	23     away for?	
24     that stuff before I tasered.	24     A. I do not.	
25     Q. Okay. And you didn't know that he had his hands or	25     Q. Did you think Mr. Kapuscinski was high?	
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1      fingers in her anus, correct?	1      A. He appeared that he was high on something. I kind of	
2      A. Did not know that.	2      felt with the female's reaction, Beneteau, she was high	
3      Q. You never observed him doing that, correct?	3      on something too.	
4      A. Correct.	4      Q. And do they give you any training on tasing people who	
5      Q. You just observed him with his legs around her neck,	5      appear to be high or under the influence of drugs?	
6      right?	6      A. I don't know if there's a specialized training in that.	
7      A. Choking her to death, yep.	7      Q. Do you have any understanding that certain drugs can	
8      Q. And I'm not trying to minimize that, I'm not.	8      make tasing more dangerous to people?	
9      A. Just the legs around the neck.	9      A. I don't know which certain drugs they would be, though.	
10     MS. McGIFFERT: Just.	10     Q. Have you heard that that could be true?	
11     BY MR. WEGLARZ:	11     A. I think that's listed as one of the warnings.	
12     Q. I probably shouldn't have said just. And before you	12     Q. One of the warnings in the --	
13     did the tasing, you didn't know or you didn't hear	13     A. Taser --	
14     about him assaulting or making physical contact with	14     Q. In the warnings provided by the manufacturer?	
15     either of the kids, fair to say?	15     A. Yes. I'll have to double check those.	
16     A. I did not know that either at the time.	16     Q. While you're doing that, I want to make sure we're on	
17     Q. Do you have any idea as to what would cause that wound	17     the same page. I'm going to show you Mitchell Number	
18     there in Exhibit 8 right in the middle?	18     1. This was the Taser International warning or	
19     A. Not a clue. I think he had a lot of wounds on him.	19     instructional sheet. Have you seen that document	
20     Q. From?	20     before?	
21     A. I have no idea.	21     A. Yes.	
22     Q. Other than the wounds you described for me or showed	22     Q. And you are aware of that document and the warnings	
23     for me that appeared to be from the Tasers, any other	23     cited in that document even before the incident	
24     wounds in the photos that I showed you on	24     involving Mr. Kapuscinski?	
25     Mr. Kapuscinski that you think could be from anything	25     A. Yes.	

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Page 121		Page 123
1 Q. Other than talking to the female, the girlfriend and	1 He wasn't listening to any of our commands.	
2 the little girl's mother, that all being one person,	2 BY MR. WEGLARZ:	
3 did you talk to any other witnesses at the scene?	3 Q. But he was struck with a Taser while he was standing	
4 A. I talked to the daughter and the son of Ms. Beneteau.	4 up, correct?	
5 Q. And it was during those discussions that they gave you	5 A. Attempting to stand, yep. He was a moving target too.	
6 those written statements?	6 Q. Well, he was on his feet by this time, correct?	
7 A. Probably right afterwards.	7 A. Yeah, I don't know what degree of standing he was in,	
8 Q. And can you tell me anything that they told you that is	8 but he was attempting to stand.	
9 not reflected in their written statements?	9 Q. But he was at least on his feet?	
10 A. I'd have to refer to the report real quick and their	10 A. Yes.	
11 statement.	11 Q. And he had preferred targets available, correct?	
12 Q. If that's what you need to do.	12 A. I don't know what the angle was, if he would have had	
13 A. Actually, I think you might -- there we go. In	13 something preferred or -- I don't know.	
14 reference to Angelo -- well, in reference to all three	14 Q. Well, if someone's on their feet, you would they think	
15 of them actually, I mean, they were all pretty	15 their legs are exposed, correct?	
16 reluctant to answer any questions. In my report he	16 A. Could be. I don't know where his arms were, though. I	
17 woke up, heard yelling, went out to see what was	17 just don't recall.	
18 happening, saw David naked but went back in his room.	18 Q. But the legs are one of the preferred targets, right?	
19 After being on scene, I spoke with him again.	19 A. Correct.	
20 Angelo stated David punched him at least once, and I	20 Q. And we know, obviously, the lower abdomen was available	
21 asked if David stepped on his neck, and he was unsure.	21 because that's where one of the probes hit, correct?	
22 I think the mom, Christina Beneteau, said, you know, he	22 A. I don't know if it was available, or he was just moving	
23 knelt on his neck. David knelt on Angelo's neck. In a	23 and ended up getting there, so --	
24 statement that he wrote, "He was mad about something.	24 Q. Do you recall Mr. Kapuscinski moving at all just prior	
25 He hit me." He was saying he was breaking stuff. "He	25 to that Taser being deployed?	
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1 stepped on my neck and punched me in the head."	1 A. Yes. He was attempting to stand.	
2 So Alice, she was reluctant also, like I	2 Q. Okay. Tell me the difference in movements that you	
3 said. She wanted to know if he was going to jail.	3 observed.	
4 Said she saw David swinging his arm at her mother and	4 A. I don't really recall. You know, just him coming off	
5 kept calling her the B word. And in her written	5 the ground to try to stand up. I couldn't say which	
6 statement, "I woke up, seen hands moving, called my	6 foot or which hand or where his knee was or none of	
7 Tina" -- must be mom -- "the B word. That's what I	7 that.	
8 heard the commotion" or the -- I don't know what that	8 Q. Okay. But both feet were on the ground.	
9 is. "Started throwing things. Angelo came in, then	9 A. I believe so. That's all I have from memory on that.	
10 went into Angelo's room," and then I came. So neither	10 Q. Were both hands off the ground?	
11 of them had a whole lot to add.	11 A. I don't know.	
12 Q. Mr. Kapuscinski never hit you, correct?	12 Q. And he was already starting to raise up?	
13 A. Correct.	13 A. Starting to stand up, yep.	
14 Q. Mr. Kapuscinski never hit or struck Officer Mitchell,	14 Q. And his torso would have been parallel to the floor or	
15 correct?	15 --	
16 A. Correct.	16 A. Somewhere bent, but I don't know.	
17 Q. Officer Mitchell's Taser did hit him in a non-preferred	17 Q. Do you think it was somewhere between being parallel to	
18 target, fair to say?	18 the floor and being bent over like that --	
19 A. Correct.	19 A. Bent down?	
20 Q. And when he deployed his Taser, Kapuscinski was	20 Q. -- at less than 90 degrees?	
21 actually standing up. I mean, preferred targets were	21 A. Bent down?	
22 available, correct?	22 Q. Yeah, over.	
23 MS. FORBUSH: Object to form.	23 A. No, that doesn't make sense if he got hit in the front.	
24 THE WITNESS: He was attempting to stand. He	24 I don't recall, but just by looking at if he got hit,	
25 was defying all of our orders to stay down, get off.	25 he definitely wasn't bending down.	

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1 Q.	So he's likely somewhere between 90 and 180 degrees,	1 the other one's just a picture of somebody on a piece	
2 his upper torso.		2 of cardboard --	
3 A. Yeah, it would have to be.		3 Q. Okay.	
4 Q. With both feet on the ground?		4 A. -- that doesn't move.	
5 A. I think so.		5 Q. Okay. And this particular instance when you deployed	
6 Q. And you can't tell me what angle his legs would be, his		6 your -- well, let's talk about when Officer Mitchell	
7 knees?		7 deployed his weapon. Was, in fact, the target, meaning	
8 A. I don't remember any of that.		8 Mr. Kapuscinski, moving?	
9 Q. Do you know if Officer Mitchell was -- had to point		9 A. Yes.	
10 somewhat downward with the Taser?		10 Q. Was it what you would consider to be a stressful	
11 A. I do not know.		11 situation?	
12 Q. Are you trained to try to shoot it perfectly level?		12 A. Absolutely.	
13 A. No. You shoot from different angles.		13 Q. Was it a situation that was changing second by second?	
14 Q. All right. That's all I have. Thanks for your time.		14 A. Even faster.	
15 MS. MCGIFFERT: I need to take a quick		15 Q. Okay. And as opposed to a target or even a	
16 two-minute break. I know you have a time restriction,		16 volunteer -- a police officer volunteer who's agreed to	
17 counsel --		17 take a tase, in this particular instance were you	
18 MR. WEGLARZ: Sure.		18 dealing with an individual who had visibly shown to you	
19 MS. MCGIFFERT: -- so I'm going to take just		19 that he was assaultive?	
20 a quick two-minute break, and I may have a few		20 A. Oh, yeah. He was trying to kill his girlfriend.	
21 questions.		21 Q. Okay. Did you consider him to be potentially	
22 (At 12:59 p.m., recess taken)		22 dangerous?	
23 (At 1:02 p.m., back on the record)		23 A. Highly dangerous.	
24 CROSS-EXAMINATION		24 Q. Okay. I don't have anything further. Thank you.	
25 BY MS. MCGIFFERT:		25 A. Thank you.	
Page 126		Page 128	
1 Q.	Officer Robinson, I have just a few questions for you.	1	REDIRECT EXAMINATION
2 I know that during your previous testimony you had made		2 BY MR. WEGLARZ:	
3 circles on that diagram, that photograph that was		3 Q. If you're involved in a situation that you believe was	
4 presented to you --		4 a matter of life and death, aren't you trained to use	
5 A. Correct.		5 lethal force?	
6 Q. -- indicating that you were somewhere in the circle and		6 A. You can.	
7 that there was another circle that you know that		7 Q. Well, what does the training tell you to do?	
8 Officer Mitchell was somewhere in that circle.		8 A. You can elevate to lethal force if you need to.	
9 A. Yes.		9 Q. Well, don't they tell you to do that? Hey, if now	
10 Q. Is it fair to say that with regard to where Officer		10 someone's life is on the line, it's time to bring out	
11 Mitchell was in the room when you initially entered and		11 lethal force.	
12 even when he deployed his Taser, is it fair to say that		12 A. You don't have to enter at lethal force.	
13 you were primarily focused on Mr. Kapuscinski and, in		13 Q. Well, you don't have to, but what are you trained to	
14 fact, his victim when she was in the room more so than		14 do?	
15 on exactly where Officer Mitchell was in the room?		15 A. Stop the threat, which we did with the use of Tasers.	
16 A. Definitely.		16 Q. But if you believe your life is in danger or	
17 Q. Okay. And you made a point earlier, and I just want to		17 someone's -- someone else's life is in danger, you're	
18 make sure that I understand it, about I think you said		18 supposed to meet that force, such as you're supposed to	
19 that this event was different than a practice exercise,		19 use lethal force to counter that, correct?	
20 is that true?		20 A. I don't know if you're supposed to. You can.	
21 A. Yes.		21 Q. How many times have you encountered an unarmed person	
22 Q. And so at a practice exercise you may have a target,		22 who was uncooperative with an arrest?	
23 whether it's a live one or not live one, correct, in		23 A. Several.	
24 terms of aiming?		24 Q. And how many times have you had to tase that person?	
25 A. Yes. This was rapidly evolving life and death, whereas		25 A. None, except for --	

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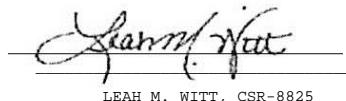
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1 Q. Right.  
 2 A. -- Kapuscinski.  
 3 Q. And how come you didn't tase those other individuals if  
 4 they were being uncooperative with your arrest?  
 5 A. I was able to -- maybe I was already too close. I  
 6 mean, there's all kinds of scenarios. But if I'm maybe  
 7 doing an arrest, I'm handcuffing them, I'm already  
 8 close, they start to pull away and struggle, I'm not  
 9 going to disengage and then Taser. I'm just going to,  
 10 you know, latch right on them.  
 11 Q. And your diagram showing the approximate location of  
 12 Officer Mitchell, that is based upon what you recall,  
 13 correct?  
 14 A. Correct.  
 15 Q. All right. And you do recall -- you do recall him  
 16 being there, you do recall his laser coming out of his  
 17 Taser and being directed at Mr. Kapuscinski and other  
 18 things, correct?  
 19 A. I recall just seeing it. I don't know what it was -- I  
 20 just remember seeing it.  
 21 Q. All right. That's all I have. Thanks.  
 22 A. Thanks.  
 23 MS. McGIFFERT: Nothing from me.  
 24 MS. FORBUSH: You're all done.  
 25 (At 1:07 p.m., proceedings concluded)

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1 C E R T I F I C A T E  
 2 STATE OF MICHIGAN )  
 3 COUNTY OF WAYNE )  
 4 I certify that this transcript, consisting of  
 5 pages, is a complete, true, and correct record of  
 6 the testimony of OFFICER GARY KEITH ROBINSON held in  
 7 this case on Wednesday, July 18, 2018.  
 8 I also certify that prior to taking this  
 9 deposition, OFFICER GARY KEITH ROBINSON was duly sworn  
 10 to tell the truth.  
 11 IN WITNESS WHEREOF, I have hereunto set my hand  
 12 on this 26th day of July, 2018.



LEAH M. WITT, CSR-8825

16 My Commission expires Notary Public, County of Wayne  
 17 December 27, 2023 State of Michigan  
 18 U.S. Legal Support  
 30800 Telegraph Road  
 19 Bingham Farms, Michigan 48025

## GIBRALTAR POLICE DEPARTMENT Taser Policy

Section #28

### Section 28.1- Purpose

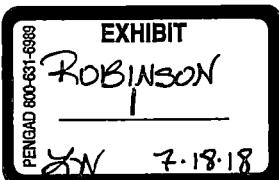
The purpose of this policy is to provide guidelines for the appropriate use of a Sharpe Pulse Generator weapon referred to as the X26 Taser. This policy establishes guidelines for the use of force and ensures proper training for all personnel of the Department as it relates to the use of the taser.

### Section 28.2- Definitions

1. **Taser-** is a Shape Pulse generator weapon that is categorized as non-deadly force or less lethal force weapon. It transmits electrical pulse that causes an uncontrollable contraction of the muscle tissue, which cause temporary physical debilitation to a person.
2. **Less Lethal Force-** is defined force that is less likely to result in death or serious physical injury. The force is used when deadly force is not justified and/or necessary, but when empty hand control techniques have been or will likely be ineffective in the situation.
3. **X26 Shaped Pulse Generator-** is a Muscular Disruption Unit (MDU) device that transmits electrical pulse that causes an uncontrollable contraction of the muscle tissue, which cause temporary physical debilitation to a person.
4. **Anti-Felony Identification Device (A.F.I.D.)** - are small identification tags that are like confetti, when they are ejected as the weapon is discharged.
5. **Air Cartridge-** is a small container that contains compressed nitrogen, A.F.I.D. tags, two darts and insulation wires.
6. **Data Port-** is an outlet that allows information to be uploaded to a computer.

### Section 28.3- Taser is an Additional Tool

1. The taser is an additional law enforcement tool and is not intended to replace firearms, or replace other tools or techniques. The taser should be used only when it is appropriate for the situation present. The use of a taser is considered as Use of Force and shall comply with the Use of Force guidelines.
- 2.



#### **Section 28.4- Taser Training**

1. No Officer of the Department shall carry a taser unless he/she has successfully completed a Department approved training course. The training shall consist of a minimum of four hours to be certified and training once a year to maintain certification.

#### **Section 28.5- Department Tasers and Carrying Procedures**

1. Only a Department issued taser shall be carried on duty or used.
2. Officers shall inspect the taser prior to carrying the taser during his/her tour of duty. Only properly functioning and charged taser shall be carried on duty.
3. At the beginning of each shift, the officer shall spark test the unit by removing the cartridge from the device, and test the X26 Taser to ensure that it is properly charged, and by turning the unit on and verifying the unit has a power supply on the CID. The officer shall make a log entry on his/her daily log that a test was performed.
4. The officer shall record on their daily log the quick reference number of the taser unit carried on his/her tour of duty.
5. Spare cartridges and X26 tasers will be stored in the police gun locker. Additional cartridges shall be available from the Chief of Police or his designee.
6. Officers can remove the spare cartridge from the extended magazine while carrying the taser. The cartridge shall be placed back in the magazine at the end of the officer's shift and appropriate log entries made.
7. The officer shall carry the taser in a department-approved holster.

#### **Section 28.6- Taser Uses**

1. Officers may use an approved taser when they are required to use physical force to take a person into custody, to protect himself/herself from physical assault, to protect a subject from injuring himself/herself or others, and against animals who pose a serious threat towards others.
2. Any subject that is tased, shall be placed under arrest for a criminal offense or transported to a medical facility for mental health evaluation.

3. If a Gibraltar police officer is assisting another agency and tases a subject, that subject shall be turned over to the agency requesting the assistance of the Gibraltar Police Department.

#### **Section 28.7- Taser Prohibited Uses**

1. Officers should avoid any of the following situations:
  - A. Aiming at a person's head, neck or groin area
  - B. Using a taser if subject is a known pregnant female
  - C. Using a taser if the subject is saturated with or is in the presence of highly flammable material or liquid

#### **Section 28.8- Prior to Using a Taser on a Subject**

1. Prior to the use of a taser, the officer, if tactically possible, shall give the subject verbal persuasion and commands. The officer shall inform the suspect that if he/she does not comply he/she will be shocked. Officers may also inform others of his/her intentions to discharge the taser weapon.

#### **Section 28.9- Accidental Discharge**

1. An Officer that discharges a taser other than the test function prior to deploying the taser for his/her tour of duty, either intentional or accidental shall notify the Sergeant as soon as possible. If the Sergeant is not available then the officer shall notify the Chief of Police or his designee as so as possible.

#### **Section 28.10- After Using a Taser on a Subject**

1. The officer shall handcuff the subject as soon as it is tactically practical to minimize the threat of injury to the subject and/or his/her self.
2. If the taser's air cartridge was deployed, the officer shall at the earliest opportunity remove the taser darts from the subject. The officer shall wear protective latex gloves when removing and handling the discharged probes. Only a taser certified officer should remove the taser darts (probes). If the probes are stuck in the facial area, soft tissue around the neck, genital area or the breasts of a female, hands or feet only qualified medical personnel shall remove them.
3. Unless a subject is hit with an accidental taser discharge, all tased subjects will be treated as a police prisoner.

4. The officer shall visually examine the areas struck by the probes to determine if an injury was sustained. The officer may provide first aid to the subject following the removal of the probes, the officer may apply alcohol wipes, and a Band-Aid to the probe sites as needed. The officer may provide the tased subject with medical attention, at any time during or after the arrest, if the officer feels that the subject is in need of medical attention (i.e. Gibraltar fire rescue and or transport to a medical facility).
5. Officers shall inspect the probes after removing them from the subject to ensure that a probe, or probe barb has not broken off and is still embedded in the subject's skin. If the probe or the probe barb has broken off in the subject's skin, the officer shall make sure the subject is provided appropriate medical attention to remove the object.

#### **Section 28.11- Collection of Evidence**

1. The officer that discharges the weapon shall be responsible to collect a minimum of three of the A.F.I.D. tags, the spent cartridge, and the darts and shall place them into evidence. The taser probes removed from the subject's body shall be considered a biological hazard and handled in accordance with Department's Bloodborne Pathogens policy.

#### **Section 28.12- Report Required**

1. When an officer either intentionally or accidentally uses the taser, even if the subject was not struck, he/she shall prepare a departmental incident report.

#### **Section 28.13- Storage**

1. The X26 Taser shall not be stored near flammable liquids or fumes and the air cartridges shall not be stored near any source of static electricity.
2. When department tasers are not being carried, the taser shall be stored in the department police equipment room gun locker.

#### **Section 28.14- Maintenance and Care**

1. Only the Chief of Police or his designee shall maintain and replace air cartridges by their expiration date. The expired air cartridges shall be used for training purposes only.
2. The Chief of Police or his designee shall be responsible for the following:
  - A. Receiving, inspect and ensure the maintenance and replacement of the X26 Taser devices assigned to department personnel.

- B. Establish and maintain systems to record issuance of the X26 Taser and cartridges. Serial numbers shall be recorded.
- C. Maintain an adequate supply of batteries and air cartridges.
- D. Return defective or damaged X26 Taser devices and cartridges to Michigan Taser Distributing.
- E. Obtain service and/or replacement for defective or damaged X26 Taser components from Michigan Taser Distributing.
- F. Provide re-certification training to certified users.
- G. Review copies of the "Taser X26 Deployment Report" for completeness, and forward copy to Michigan Taser Distributing.
- H. Maintain training updates from Michigan Taser Distributing.
- I. Investigate each incident and ensure the proper forms are submitted.

#### **Section 28.15- Excessive Force**

- 1. Officers shall use the X26 Taser in accordance with Departmental Use of Force Policies. Use of excessive force may subject an officer to disciplinary action including termination of employment and/or prosecution.



**City of Gibraltar**  
Public Safety Department

**GIBRALTAR POLICE DEPARTMENT GENERAL ORDER**

<b>SUBJECT</b>				
<b>POLICE USE OF FORCE/FIREARMS</b>		<b>EFFECTIVE DATE</b>		<b>NUMBER</b>
<b>DATE OF ISSUE</b>	<b>IMMEDIATELY</b>		<b>EXPIRATION DATE</b>	<b>TOTAL PAGES</b>
<b>RESCINDS</b>	<b>AMENDS</b>			
10/20/95				95-7
				14

**I. PURPOSE**

The purpose of this order is to establish policy and procedure regarding the appropriate and acceptable use of force, to provide for a high degree of officer safety, and to provide for the treatment of any injury or complaint of injury arising from the use of force.

**II. DEFINITIONS**

- A. "Control" is the method/methods an officer uses to neutralize the unlawful actions of a subject, or to protect the subject from injuring himself or others.
- B. "Resistance" is defined as the subject's attempt to evade an officer's attempts to establish control.
- C. "Force" is the attempt to establish control through physical means, in the presence of resistance. all force is a means of control, however, control can at times be achieved without the use of physical force.
- D. "Non-lethal Force" is that amount of force that will not likely result in death or serious physical injury.
- E. "Lethal Force" is that amount of force that could result in death or serious physical injury.
- F. "Minimum Amount of force" is that amount of force that is reasonably necessary to overcome the resistance offered and to effect the lawful performance of duty..
- G. "Reasonableness" means within reason, moderate action suitable to the situation, consistent with department approved training and policies. The final decision as to the reasonableness of a police action will be determined on a case by case basis by those members of the department called upon to review the appropriateness of those tactics or actions, based on what a "reasonable" officer would have done under like circumstances.
- H. "Last Resort" situations are those wherein certain immediate and drastic measures must be undertaken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or

**EXHIBIT**

PENCO 800-681-6989

ROBINSON  
2

JW

7-18-18

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weapons not covered by policy, however, they remain to be tested by "reasonable" and "necessary" use of force standards.

### **III. POLICY**

It shall be the Policy of this Department to employ the minimum amount of force, reasonable and necessary, to overcome the resistance offered, effect a lawful arrest, and/or accomplish the lawful performance of duty while protecting the public.

The use of unreasonable, unnecessary force, and/or the failure to provide proper medical treatment following the use of force, shall, in every case, result in certain and severe disciplinary action against those who use or allow the use of such force, or fail to provide for the care of persons in custody.

### **IV. AUTHORIZATION FOR THE USE OF FORCE**

A. Michigan statutes deal with the legal levels of force that law enforcement officers may use in the normal performance of their duties. It should be emphasized that when consent or an emergency is not present, and there is not probable cause to make an arrest, the non-consensual touching by a police officer may constitute a crime, as well as result in civil liability. When probable cause exists, criminal and civil liability may still occur if the limits of the law are exceeded.

B. During an officer's tour of duty it may be necessary to use some level of control to effect an arrest or to protect others. In many situations control may be achieved without the use of physical force. In other instances, based on the resistance offered, the officer may find it necessary to use varying levels of physical force to control the subject's actions. That amount of force may be as low as placing a hand on a subject's shoulder or arm and directing that subject to place their hands in an appropriate position in order to apply handcuffs. The amount of force would be considered "mere physical contact".

However, depending on the level of resistance offered, the officer may use techniques that may rise to a level of physical force that is intended to influence behavior

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through pain compliance, in order to establish control. These techniques would consist of touch pressure, leg/hand strikes, impact weapons, or even the use of firearms if justified by the resistance offered.

#### V. LEVELS OF CONTROL

A. For purposes of this policy, the use of force will be examined from two (2) perspectives; resistance and control. Both resistance and control can be in the form of verbal responses (subject) or directives (officer), or physical actions.

B. Resistance is defined as the subject's attempt to evade an officer's attempt to control. The amount and type of resistance will vary based on a variety of factors. For purposes of this policy, the department recognizes the following levels of subject resistance and their definitions:

Psychological Intimidation--Non-verbal cues indicating a subject's unwillingness to comply with control, through apparent resistive attitude, appearance, and physical readiness to resist.

Verbal Non-Compliance--Verbal cues indicating a subject's unwillingness to comply with control, through resistive statements, threatening statements, or other "fighting words".

Passive Resistance--Physical actions that do not prevent an officer's attempt at control, but fail to assist in that control. An example is "dead weight".

Defensive Resistance--Physical actions which attempt to prevent an officer's attempts at control, but do not attempt to harm the officer. Examples include pulling away or locking the body in a fetal posture.

Active aggression--Unarmed physical actions which attempt to harm the officer. Examples include punches and kicks.

- Aggravated Active Aggression--Armed assault upon the officer.

C. Control is the method an officer uses to neutralize the

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unlawful actions of a subject, or to protect a subject from injuring themselves or others. The type of control methods used will vary based on a variety of factors. For the purposes of this policy, the department recognizes the following levels of control and their definitions.

**Officer Presence**--The control manifested by the presence of an officer, whether uniformed or not, on the scene.

**Verbal Direction**--The control manifested by the officer's use of spoken commands and directions.

**Soft Empty Hand Control**--The use of empty hand techniques that are unlikely to result in physical injury. Examples include control holds and pressure point touch pressure.

**Hard Empty Hand Control**--the use of empty hand techniques that have an increased likelihood of resulting in physical injury. Examples include punches, strikes and kicks.

**Soft Intermediate Weapon Control**--The use of an implement to effect control, in a manner that is unlikely to result in physical injury. Examples include handcuffs and aerosol subject restraints.

**Hard Intermediate Weapon Control**--The use of an implement to effect control, in a manner that manifests an increased likelihood of physical injury. Examples include baton strikes.

**Lethal Force**--The use of an implement or technique, in a manner that is reasonably likely to result in death or serious bodily harm. Examples include firearms, motor vehicles and impact weapon strikes to the head or throat.

## VI. USE OF FORCE PROCEDURES

A. Officers should assess the incident in order to determine the level of control that would be appropriate. When possible, officers should attempt to gain control by means of verbal directives or commands.

B. If verbal directives or commands are ineffective, or not feasible given the circumstances of the situation, the officer may find it necessary to escalate to control methods that involve the use of physical force. If force is

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necessary, the officer must decide which technique(s) or authorized equipment will best de-escalate the incident and bring it under control in a safe manner.

C. Officers are authorized to use department approved control techniques and authorized equipment for resolution of incidents as follows:

1. To stop potentially dangerous and unlawful behavior.
2. To protect the officer or another from injury or death.
3. To protect subjects from injuring themselves.
4. And, in the process of effecting a lawful arrest when subject offers resistance.

## VII. LETHAL FORCE PROCEDURES

### A. AUTHORIZED USE OF LETHAL FORCE

The use of lethal force is considered a measure of "Last Resort" as defined under Section II. H., and is limited to the following situations:

1. to protect the officer or another person from what is reasonably believed to be an immediate threat of death or serious physical injury;
2. to prevent the escape of a subject who is fleeing from an inherently violent felony crime, and the officer has probable cause to believe that the subject poses a significant threat of death or serious physical injury to the officer or others.

Whenever any one of the two conditions described above are present, where feasible, officers shall identify themselves and provide a warning before the force is applied.

### B. USE OF LETHAL FORCE PROHIBITED

Lethal force may not be used in the following situations, except as a "Last Resort", as defined under Section II., H. of this policy:

1. when it appears likely that an innocent person may be injured;
2. to shoot at or from a moving vehicle. This tactic

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- seldom, if ever proves effective and poses a significant risk to innocents;
3. solely because a subject fails to stop for a blockade or roadblock, or fails to obey a command to stop;
  4. to fire "warning" shots, or shots to attract attention.

#### VIII. LETHAL FORCE CONSIDERATIONS

A. Court cases addressing the use of force by police officers.

1. Tennessee vs. Garner 471 US 1 (1985). A U.S. Supreme Court decision which stated that deadly force is not constitutionally reasonable to prevent the escape of all felony suspects, especially where they pose no immediate threat to the officer and no threat to others. A police officer may not "seize" an unarmed, non-dangerous felony suspect by shooting him dead. However, when an officer has "probable cause" to believe that the suspect is armed with a weapon or poses a threat of serious physical harm, either to the officer or to others, deadly force may be used if necessary to prevent the escape of the suspect.

2. Delude vs. Raasakka 391 Mich (1974). This Michigan case concluded that the police have the right to use the force reasonable under the circumstances to effect a lawful arrest. The police may also take what action is reasonable to protect themselves in the course of an arrest or an attempted arrest.

3. Alexander vs. Riccinto, 192 Mich App 69 (1991). This Michigan Court of Appeals case stated that a police officer making a lawful arrest may use that force that is reasonable in self-defense circumstances and is not required to retreat before a display of force by an adversary. The officer must have a reasonable belief of great danger before responding with the appropriate amount of force to foreclose the threat.

4. Graham vs. Connor 490 US 386 (1989). This U.S. Supreme Court case analyzed police conduct in a force situation. The court said that police conduct must be examined to determine whether the officers actions are objectively reasonable in light of the facts and circumstances confronting the officer, without regard to their intent or motivation. This is to be judged from the perspective of the officer on the scene. The analysis of

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reasonableness takes into consideration the facts and circumstances including:

- A. Severity of the crime at issue
- B. Whether the suspect poses an immediate threat to the safety of the officer and others
- C. Whether he is actively resisting arrest or attempting to evade arrest by fleeing the scene.

In this case, the U.S. Supreme Court stated that if there is a right to make an arrest, there is a right to use some physical force. Also, that the reasonableness standard must make an allowance for the fact that police officers are often forced to make split second judgements in circumstances that are tense, uncertain, and rapidly evolving.

#### IX. ESCALATION AND DE-ESCALATION OF FORCE

A. Escalation of force may be justified when the officer is convinced that the level of force being used is insufficient to stop or control the resistance.

B. Officers may escalate to the level of force that is "reasonable" and "necessary" to control the situation, based on the level of resistance encountered. As the subject begins to de-escalate or lessen the resistance offered, the officer must de-escalate in a similar manner, for example:

1. to control a passive subject, the officer would use a strength technique (mere physical contact) first. If unsuccessful, the officer will escalate one step higher to a pain compliance technique such as a pressure point or a joint lock, with consideration given to the potential for injury when escalating to each greater level.

2. as the passive resister begins to comply with verbal commands, the officer would reduce the amount of pressure applied at the pressure points or joints.

C. This is not meant to imply the officer must ease all control. Control must be maintained, but the level of force used to maintain control must de-escalate to a level commensurate to the level of resistance currently offered by the subject.

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#### X. VARIABLES THAT EFFECT THE FORCE CONTINUUM

The officer should consider the following variables when making a decision to escalate or when to de-escalate the level of control:

- A. Officer/Subject: size, physical abilities;
- B. Environmental Conditions: such as close or confined areas;
- C. Nature: of contact;
- D. Exigent Conditions: number of officers, number of subject involved, availability of back-up;
- E. Reaction Time: the officer must consider that action is faster than reaction; thus the officer must pay attention to the above factors when preparing for a course of action.
- F. Reactionary Gap: officers should be cognizant of, and utilize, a reactionary gap during all police contacts. The reactionary gap is defined as a safety zone between the officer and subject which affords the officer more time to react to aggression:
  - 1. the average distance is six feet or more;
  - 2. varies with type of weapon the subject may possess;
  - 3. the officer always has two "Reactionary Options" available:
    - a. penetrate the gap to attempt control;
    - b. disengage to create distance.

#### XI. MOTOR VEHICLES AS FORCE

- A. Officers must be aware, and acknowledge, that in many instances the motor vehicle can be viewed as an instrument of force. Intentional collisions, partial or complete roadblocks, or other similar methods, techniques, or actions have been ruled to be the use of force.
- B. "Boxing in" maneuvers and so called "rolling roadblocks", create a high probability of contact between the officer's and subject's vehicle. As a result, these techniques may also be considered a use of force.

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- C. The use of any such methods, techniques or actions must be justifiable and in accordance with departmental guidelines.
- D. The use of any such methods, techniques or actions have a high probability of causing death or serious physical injury. The use of any such methods, techniques or actions are therefore classified, in most situations, as the use of lethal force as defined in this order.

## XII. MEDICAL CONSIDERATIONS

- A. Officers using any degree of force on a subject shall make medical treatment available to that subject when:

- 1. the subject requests medical treatment, or
  - 2. the subject complains of injury or continued pain, or
  - 3. any officer observes or suspects injury to the subject, or
  - 4. when directed by a supervisor or acting supervisor:

\* A second officer, preferable one not involved in the confrontation, should be designated to convey and monitor the subject at the hospital.

\* Any subject upon whom force is used should be monitored closely.

\* Persons exhibiting signs of unusual distress should be transported to a medical facility for treatment.

- B. Officers that provide a subject with medical treatment shall document same, along with the nature of the injury or complaint of injury, in the incident report and the Use of Force report form.
- C. Medical treatment will be provided at a licensed, accredited medical facility by a licensed, accredited physician.

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D. Officers who provide a subject with medical treatment shall, prior to removing the subject from the medical facility, receive written authorization from the attending physician to do so.

E. Officers involved in a use of force incident shall apprise the desk supervisor of the circumstances and nature of injuries.

XIII. INVESTIGATION OF USE OF FORCE

- A. The desk supervisor will thoroughly review every incident in which an officer uses force.
- B. After reviewing the circumstances surrounding the use of force, the supervisor shall submit a written report to the Chief of Police. The report shall contain the observations and conclusions of the supervising officer as to whether the use of force was justified and in accordance with departmental policy.

XIV. DISPLAY OF FIREARMS

Firearms may be displayed and held in the "ready position" in the following situations:

- A. Where the use of firearms is authorized pursuant to this policy.
- B. Where the person to be apprehended has committed, or there is probable cause to believe the person to be apprehended has committed, a felony offense and the possibility of confrontation with deadly force exists, based on the:
1. Severity of the charge;
  2. Individual or number of individuals to be apprehended;
  3. Credible information received concerning weapons and/or propensity for violence;
  4. Other circumstances under which the felony arrest may occur which renders the drawing or display of a firearm a reasonable precaution.

PROVIDED, in either case that:

Conditions are such that drawing or displaying a firearm can be accomplished without reasonable

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risk of accidental discharge. Firearms shall not be displayed or drawn in any misdemeanor or civil arrest.

C. This policy does not prohibit an officer from placing his hand on the grip portion of his weapon during the initial stages of a traffic stop or when confronting individuals at a crime scene while determining their threat level to the officer.

D. Officers in plain clothes, whether on duty or off duty, shall make every effort to conceal their weapon from public view when away from the confines of the police station and not involved in any authorized weapon display situation.

XV. DEADLY FORCE, OTHER THAN FIREARMS, PROHIBITED

Deadly force may consist of the use of items, articles, instruments, or equipment other than firearms which are designed, intended and routinely utilized for other legitimate, police-fire purposes, such as vehicles, batons, flashlights, etc. Deliberate use of any such item, article, instrument or equipment for any purpose other than for which it is designed and intended, or in a potentially deadly manner (i.e. as a club), is prohibited except in cases where the use of deadly force is specifically authorized in this order.

XVI. SURRENDERING OF FIREARMS

- A. No officer shall display or provide any weapon to a citizen to inspect, examine or otherwise handle.
- B. No officer shall furnish their firearm to any citizen or civilian enlisting their assistance in any way.
- C. Due to the fact that the individual officer must make the ultimate decision as to the safety of others and their own personal safety, any decision to surrender the weapon shall be solely in the discretion of the officer. Most officer safety studies show that the officer has a better chance of survival if he does not surrender his weapon.

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#### XVII. OFF-DUTY USE OF FIREARMS

It shall be the policy that sworn officers are not required to be armed while off duty. However, the department administration realizes that most officers will in fact, carry a firearm while off duty.

All officers that do carry a firearm off duty, will only carry a department issued duty weapon, department issued off duty weapon, or a personally owned weapon approved by the Firearms Instructor. All officers wishing to carry a gun off duty must first qualify with a passing score at least once in a calender year in the presence of the Department Firearms Instructor. If armed and off duty, officers are still governed by all department policies regarding use of force, lethal force, and subject to discipline for any violations of the policies. Officers are reminded that outside the City of Gibraltar, officers cannot arrest for misdemeanors committed in their presence. Best course of action is for the officer to be a "good witness" for the jurisdiction in which the incident occurred.

#### XVIII. DESTRUCTION OF ANIMALS

Officers may use firearms to destroy severely injured, vicious or rabid animals, which are menacing persons or other domestic animals provided other reasonable means of apprehension are not available or feasible. Such destruction requires that it can be accomplished in complete safety with regard to other persons and property. Domestic animals are, in reality, personal property and in instances where feasible, a written request and/or waiver for the destruction of the animal should be obtained and maintained as part of the incident report.

#### XIX. REPORTING THE DISCHARGE OF FIREARMS

A. Any officer who discharges his weapon or uses deadly force for whatever reason shall prepare a department "Firearms Discharge Report", in addition to a complaint report. This department report is for administrative use only. A copy will be maintained in the officers permanent personnel file. The desk supervisor is responsible for assuring the report is completed and turned over to the Chief of Police prior to being relieved of duty.

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B. In all cases, except involving animals, where an officer's weapon is discharged on duty or off duty and a person is struck with a department weapon or projectile, the Chief of Police will be notified immediately.

XX. PROCEDURES

A. Should an officer be personally involved in using deadly force, the desk supervisor is responsible for calling in another officer to relieve the involved officer on road patrol duties. The department detective will be called in also to initiate an investigation and interview witnesses.

B. Officer(s) involved will be afforded the opportunity to confer with a police union representative and/or an attorney prior to completing the required police reports. Refusal to complete required department reports will subject an officer to immediate suspension without pay.

Should the required reports be completed, the officer will automatically be placed on what will be called "administrative leave", (sent home with pay pending determination of status by the Wayne County Prosecutors Office and/or the Chief of Police).

Officers charged by the Wayne County Prosecutor for alleged crimes involving the use of force shall be suspended without pay, upon issuance of a warrant and until the outcome of the case has been determined.

Officers charged with a crime will be required to turn in the department issued equipment, weapon, handcuffs, radio and identification, for safekeeping until the case has been adjudicated by the appropriate court.

XXI. OFFICERS ASSIGNED TO OTHER AGENCIES

Officers of this department assigned to or assisting other law enforcement agencies/mutual aid teams will be guided by this policy.

XXII. APPLICATION

This order constitutes department policy, and is not intended to enlarge the employee's civil or criminal liability in any way. It shall not be construed as the

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creation of a higher legal standard or safety or care in an evidentiary sense with respect to third party claims insofar as the employee's legal duty as imposed by law.

**XXIII. COMPLIANCE**

Any officer who violates any section of this General Order regarding Police Use of Force, subjects himself to department discipline, up to, and including termination.



Chief Paul A. Lehr

15-1217 - 04/16/2015 - OFC. ROBINSON:

**INFORMATION:**

On 4-16-2015 at approximately 0322 hours I was dispatched to 14680 Middle Gibraltar Road for a domestic in progress. Dispatch advised the caller was a 10 year old boy and he would be waiting outside to let me in. At the time of the call I was speaking with Officer Mitchell from the Rockwood Police Department at Carlson High School and I requested that he assist me.

**INVESTIGATION:**

I arrived at the scene within minutes and discovered a juvenile male standing outside the apartment complex, he would later be identified as Angelo Beneteau. Angelo advised his mother and her boyfriend were fighting upstairs and I asked if it was verbal or physical. Angelo stated it was both. I then walked to the second floor of the apartment complex and knocked on the door of apartment 16. A juvenile female answered the door and she was crying, she would later be identified as Alice Beneteau. I asked where they were fighting and she pointed to a back bedroom. Alice was screaming and asking if he was going to jail as I proceeded to the bedroom. While making my way to the bedroom I could hear groaning coming from the bedroom. I was unsure if the groans were from a male or female.

I opened the bedroom door and discovered a completely nude male and a female wearing only a shirt on the bed, they would later be identified as David Kapuscinski and Christina Beneteau. The two were lying facing each other but his head was at her feet and her head and neck were between his thighs. The man was squeezing the female's neck and she was not breathing normally. She was making a gasping noise. The room was very messy with clothing and garbage on the floor. Near the bed I observed two piles of what appeared to be feces. The man was making an odd growling noise and I gave him verbal commands to let the woman go. The man was covered in sweat and he had a crazed look on his face. His eyes were open very wide and the whites of his eyes were red. The man kept yelling, "I'm going to kill her!". After multiple commands to let her go and him yelling "I'm going to kill her!" I deployed my Taser. The man and woman immediately began to separate after deployment. The woman was able to get free from the man's grasp and get out of the bedroom. The man fell to the floor briefly but attempted to get up. The man's aggressive actions showed he continued to be a physical threat to myself and anyone in the apartment. I attempted to Taser the man again but it was not affecting the subject. I tried again but discovered the Taser probes were no longer attached to the man. Officer Mitchell then deployed his Taser as the man was attempting to stand up. The Taser was effective and I was able to start handcuffing the man. I handcuffed the man behind his back as the man laid on his stomach. Officer Mitchell requested medical response at this time.

After several seconds of the man not responding to officers calling him by name I began placing the man in a recovery position, on his side and with his left leg bent at 90 degrees. The man was still not responding and I rolled him completely on his back. I then attempted a sternum rub and the man did not react. It now appeared the man was not breathing but I was able to feel a pulse in his neck. I advised dispatch to request Brownstown Fire as they are an advanced life support unit. Officer Mitchell proceeded to his vehicle to get a breathing mask for CPR and I started chest compressions. After several cycles of chest compressions and rescue breaths the Gibraltar Fire Department arrived and took over medical care. An AED was applied in the bedroom and a shock was delivered. At this time medical responders carried the man out of the apartment on a stretcher. Brownstown Fire was now on scene.

EXHIBIT

ROBINSON  
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PENGD 800-631-6389

JW

7-18-18

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**INTERVIEW:** Christina Beneteau – Victim

Christina stated she has been in a dating relationship with David since October 17<sup>th</sup> 2014. Christina stated she was sleeping in the living room with David and she could hear him breathing very loud so she attempted to wake him up. She said he woke up very sexually violent and he forced his penis in to her mouth very hard. Christina said it was against her will and he forced his penis into her mouth so hard that she threw up several times. Christina said she was able to go into the bathroom away from David but he followed and began crying and hugging her. Christina then said David dragged her into the bedroom where her son sleeps. David then punched Angelo at least one time on the top of the head and kneeled on his throat. Angelo was able to get free and left the room. I asked about the feces that I saw on the floor and Christina said it was hers. Christina said David put both his hands up her anus and pulled the feces out. Christina also stated that was against her will. I asked what was happening when I entered the room and she replied, "He was choking me." Christina believes the entire incident lasted approximately 30-45 minutes prior to officers arriving.

**INTERVIEW:** Angelo Beneteau – Witness

Angelo was reluctant to answer any questions. Angelo stated he woke up and heard yelling and went out to see what was happening. Angelo said he saw David naked but went back into his room.

After being on scene longer I again spoke with Angelo. Angelo stated David punched him at least once. I then asked if David stepped on his neck at one point and he was unsure. Angelo said he called 911 and went outside to wait for police.

**INTERVIEW:** Alice Beneteau – Witness

Alice was also reluctant to answer my questions and wanted to know if David was going to jail. Alice said she saw David swinging his arms at her mother and kept calling her "The B word."

**WRITTEN STATEMENTS:**

I requested to have Christina, Angelo and Alice fill out written statements. See attached statements.

**DISPOSITION:**

I contacted D/Sgt Hammar while on scene and he responded to the station. See his supplement.

**SUPPLEMENT – 04/16/2015 – D/SGT HAMMAR**

At 4:05am I was requested by Officer Robinson to respond to his location to investigate an incident. I arrived at 14680 M Gibraltar Rd Apt. #16 at approximately 4:30am and was advised of the events leading up to this incident.

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I spoke with Christina Beneteau, the victim of what appears to be an unwanted sexual assault by her boyfriend David Kapuscinski. Christina stated that she went to bed at approximately 10:00pm last evening, before her boyfriend went to bed. Christina stated that she woke up in the middle of the night (unknown time) and was listening to David who appeared to be having a nightmare.

Christina stated that at some point David began to force her to perform fellatio on him and had struck her in the face several times stating "Bitch you better do this" and "Bitch you better suck it right". Christina stated that she had to be soft trying not to hurt him and that she had vomited several times because he had pushed his penis so far into her throat. Christina pointed to her hair stating she still had vomit in her hair. Christina stated that this went on for 30 to 45 minutes before David allowed her to go to the bathroom.

Christina stated that while she was sitting on the toilet seat David came into the bathroom, got down on his knees and hugged her stating "Baby I'm sorry, I'm so sorry".

Christina stated that at some point David had "Grabbed my anus and ripped it open". Christina began to tell me how David (age 14) allegedly claims to have been sexually molested by a Southgate police officer who was kicked off the force. Christina stated she thought David might have ripped her anus because David was thinking about that incident.

Christina stated that she had met David at the Sav-Mor pharmacy located at 29255 W Jefferson in the city of Gibraltar on August 17, 2014. Christina stated that David had been taking care of her children recently because she had been at a mental ward. Christina stated that she had just come home on Monday 4/13/15. Christina stated that David was good to her children, did not do drugs and was only on one current prescription.

Christina handed me a bottle of Omeprazole 20mg, that states "take 2 capsules (40mg) twice daily before a meal". The bottle states "May cause Dizziness". The bottle appeared to have been filled on 4/3/15 and was almost full.

Christina stated "I knew this was going to be the last time I was going to see him". I asked her what she meant by that statement. Christina stated "Well if he does this to me once, then there won't be a second time".

I then spoke with Christina's son Angelo. Angelo stated that he heard yelling and screaming coming from his mom and her boyfriend, stating that his mom and David would sleep in the living room. Angelo stated after approximately 30 minutes he walked outside where he could see the address on their apartment building and called 911 to ask for help. Angelo pointed to a hole in his bedroom wall and stated he had hit the wall in frustration at some point during the incident.

The hole in the plaster was about the size of Angelo's fist. Angelo pointed to (2) other holes in the plaster, stating that both were new holes caused by things that were being thrown around the

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room when his mom and David had gone into his room after he left to call police. Angelo showed me a tablet that was lying near the bed plugged into a charging cord, and pointed out that the smallest hole in the plaster appeared to be caused by the corner of the tablet. I picked up the tablet and laid it on the bed observing one of the corners had been damaged.

Angelo stated that he stayed outside until the police arrived and did not go back into the apartment until they were taking David out the door on his way to the hospital. I spoke with Alice, Christina's daughter. Alice stated she heard yelling and screaming but never left her bedroom. Alice stated that she did not observe anything, she stayed in her bedroom.

Officer Robinson was still on scene while I was taking several photographs, he advised me that what appeared to be human feces was on the floor next to the bed in Angelo's bedroom. I located a spot on the wood floor next to Angelo's bed that appeared to possibly be smeared human feces. I took photographs of the suspected feces, the holes in the same bedroom wall and the other rooms around the apartment.

I advised Christina that I needed to go to Southshore Hospital to follow up with the condition of David; I was preparing to leave the apartment when Officer Robinson stated that he had called our department union president (Officer Steve McInchak) to advise him of the incident, stating that our dispatcher had confirmed that David had been pronounced dead at Southshore Hospital. We walked outside into the parking lot, and then Officer Robinson left the scene. I made contact with Officer McInchak by radio who advised that we needed to contact the police chief and turn this investigation over to the Michigan State Police. I returned to the apartment, waiting for Officer McInchak to arrive.

**5:40am** I advised Christina that David had died at Southshore Hospital, she yelled "What". I asked Christina to remain calm as Alice came running into the living room asking what was wrong. Christina told Alice that David was going to be at the hospital for a while just like mommy was; she then said David may never come back after what he did to me tonight.

I went into the bedroom to attempt to have the children get dressed because we were going to have Christina and her children leave the apartment. I observed Christina on her knees trying to clean up the area in Angelo's bedroom where the suspected human feces was observed, I asked her to stop, but she had already wiped most of the stain away.

**5:45am** Officer McInchak arrived on scene and assisted me with getting shoes and coats on the kids. **5:48am** I called Chief Larry Williams and advised him of the incident, he agreed that MSP should handle the investigation and he stated that he was on his way in.

**5:59am** I transported Christina and her children to our police station. Officer McInchak was going to secure the apartment and stand by until MSP arrived. At the station, I tried to make Christina and her children comfortable, advising her that MSP will probably want to speak with her about this incident.

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**6:38am** I contacted Charge nurse Tim Renner by phone, asking him to secure David's body because we were treating it as a crime scene. Tim advised that the shift change was coming up at 7:00am, so if I wanted to speak with the midnight staff they would be leaving soon.

**6:55am** Out at Southshore Hospital and met with Charge Nurse Tim inside the trauma room. David was still lying on the gurney covered up with a blanket.

I pulled the blanket down and took photos of David's body and then pulled the blanket back over him. I advised Chief Williams that I would be standing by waiting for instructions from MSP investigators.

The following is a list of the staff who had worked on David when he arrived at Southshore:

ER Staff

Doctor Melanie Aaberg

Charge Nurse Tim Renner (RN) personal cellular number - (734) 752-2278

Linda Gergely (RN)

Pete Zammit (Paramedic)

**7:20am** I met with David's mother, Carolyn Kapuscinski, (734) 771-9623 in the ER lobby. Carolyn stated that she had been called by Christina and informed about the incident. Carolyn had come to the hospital with her daughter in law and her daughter in laws mother. I tried to comfort her with the small amount of information I could release, but informed her that MSP was handling the entire investigation and she would need to get the answers to her questions from them.

The ER staff comforted David's family, but advised them there was nothing the hospital could do to assist them any further, the family left the hospital at 8:05am.

I spoke with the hospital chaplain who requested information should more family arrive at their facility with questions. While I was speaking with the chaplain, I was advised by dispatch that Christina had requested an ambulance and may be brought to Southshore Hospital for treatment, along with her two children. The Chaplin advised that she would assist the staff with the children, as she went to prepare for their arrival.

**9:07am** I was relieved from the hospital by Sgt Lawyer, on my way out I briefly spoke with MSP detectives who were arriving at the ER. I left the hospital and returned to the scene at 14680 M Gibraltar and waited with Officer Trush and Officer McInchak until MSP detectives arrived on scene. Shortly after MSP arrived they requested that I write my report and would like a copy for their investigation, I returned to the station and completed this report.

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**SUPPLEMENT – 04/16/2015 – CHIEF WILLIAMS:**

On 04/16/2015 at 5:47 a.m. I was notified by D/Sgt. David Hammar that Officer Robinson had tasered a male subject (later identified as David Kapuscinski) who had been assaulting his girlfriend (later identified as Christina Beneteau) at the Gibraltar Shores Apartment complex at 14680 Middle Gibraltar Road, Apt. #16. D/Sgt. Hammar said the male (Kapuscinski) had developed a medial issue and was transported to Southshore Medical Hospital where he died.

D/Sgt. Hammar advised he would be transporting the female (Beneteau) and her two children to the police station once Officer Steven McInchak arrived at the scene of the incident. I informed D/Sgt. Hammar that I would be in immediately to the police station.

6:25 a.m. I arrived at the police station, I was briefed by D/Sgt. Hammar of the incident, it was then that I learned of the names of the individuals involved in the incident. I then telephoned the Michigan State Police and spoke with Dispatcher Bret Lundin who informed me that an investigation team from the State Police would be sent to the police station to begin the investigation into this incident.

I then met with the following Michigan State Police investigators; D/Lt. Jim Smiley and D/Sgt. Patrick Roti and informed them of what was known about the incident.

I was informed that Christina was being taken to the hospital and that a Michigan State Police investigator would be with her.

I then saved the 911 telephone call received by the police department on this incident to prevent it from being recorded over, a copy of the recording was made and turned over to the Michigan State Police.

The Trenton Police Department was contacted and a recording of the police and fire radio discussions made during this incident and was also turned over to the Michigan State Police.

A copy of the Gibraltar Police Department's Taser policy as well as the Use of Force policy was made and Officer Timothy Trush was ordered to obtain taser information requested by the state police for the investigation. These policies and the requested taser information were turned over to the Michigan State Police.

I then spoke briefly with Officer Gary Robinson in the presence of Police Officer Labor Council attorney Thomas Zulch, Officer Robinson was told at this time he would not be asked anything about the incident but would be asked tomorrow to write a report. Officer Robinson was placed on paid leave for an undetermined amount of time.

I made the location of the incident, but never entered the incident scene.

**15-1217**

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04/17/2015 at 4:00 p.m. I read Garrity Rights to Officer Gary Robinson in the presence of Police Officer Labor Council attorney Thomas Zulch, I allowed Officer Gary Robinson to read the Garrity Rights form himself and then ordered Officer Gary Robinson to write a written report on this incident which he did, a copy of the report was made, it was sealed in an envelope with tape for the Michigan State Police.

04/22/2015 at 8:15 a.m. D/Sgt. Mark Lesinski came to the police station for the sealed envelope containing Officer Gary Robinson's report, it was handed to him.

No further action by Chief Larry Williams.

**SUPPLEMENT – 07/17/2015 – CHIEF WILLIAMS:**

On 07/17/2015 This Writer received a telephone call from Detective Sergeant Pat Roti of the Michigan State Police Department, Roti said the Wayne County Prosecutor's Office determined that no criminal charges would be authorized against Officer Robinson, the investigation was closed. Roti said a letter from the Wayne County Prosecutor's Office stating the same had been received, a copy of this letter was received from Roti and is attached to this report.

On 07/23/2015 Detective Sergeant C. Fellner of the Michigan State Police Department came to the station with the tazer that was involved in this incident. The tazer was turned over to This Writer to be placed back into active service.

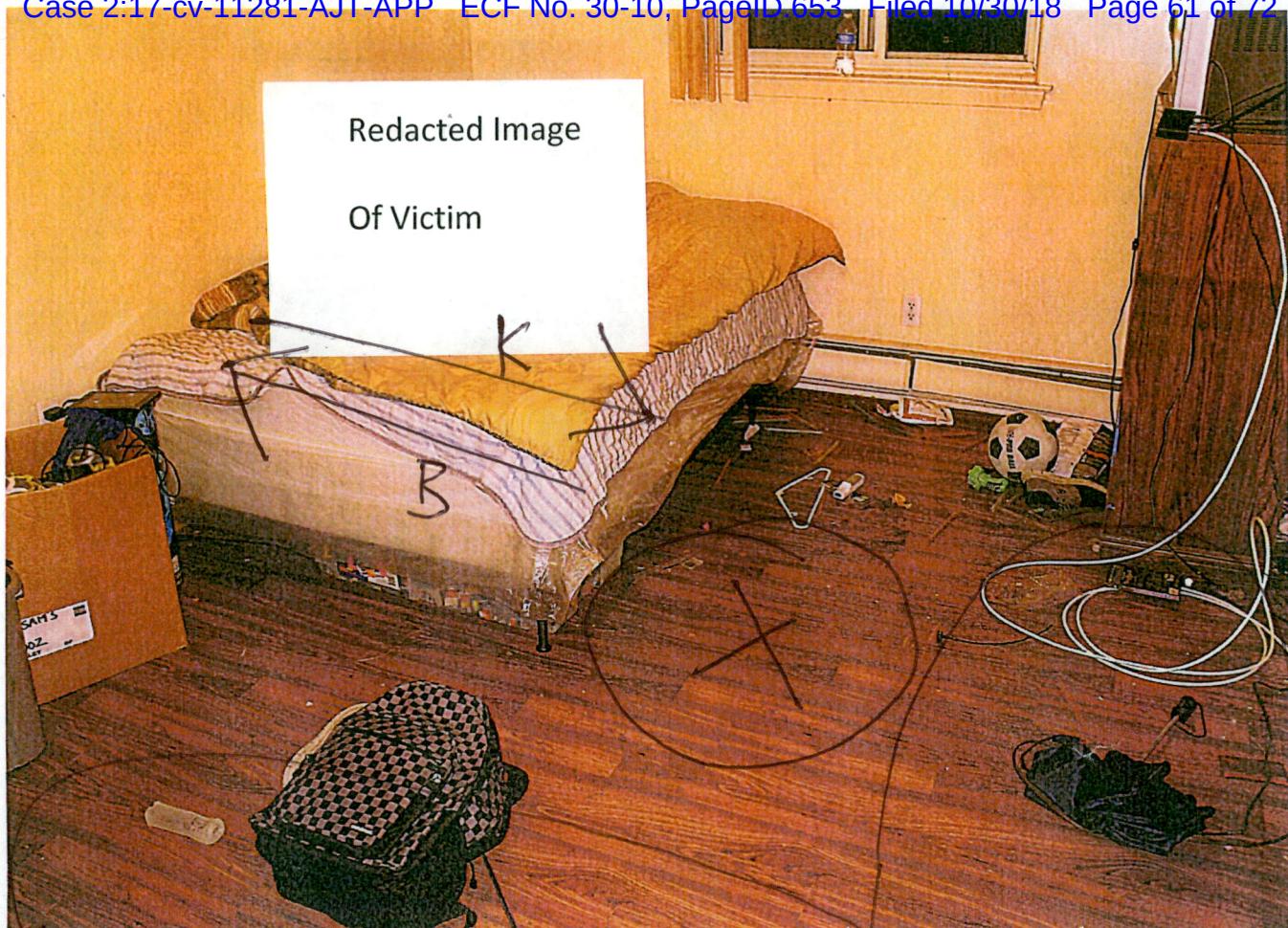
No further action in this case needed.

**SUPPLEMENT: 08/24/2015 Lt CANTERBURY:**

On 08/24/2015 at approximately 12:05pm, Trooper D/Sgt. Patrick Roti, came into the station and dropped off the Tazer Prongs and Chads that were collected at the scene. D/Sgt Roti stated that his department has finished their investigation and has no further need for these items.

R/O signed for the packaged prongs and chads, R/O then turned the items over to D/Sgt Hammar.

**CASE CLOSED.**



EXHIBIT

MITCHELL  
2

PENGAD 800-631-6989

LW 6.28.18

EXHIBIT

ROBINSON  
4

PENGAD 800-631-6989

LW 7.18.18



1300 East Warren Avenue  
Detroit, MI 48207

### POST MORTEM REPORT

15-4606  
COUNTY OF DEATH  
WAYNE  
TOWN OF DEATH  
TRENTON  
DATE PRONOUNCED DEAD  
Apr 16, 2015

THIS IS TO CERTIFY THAT

Jeffrey Hudson, M.D. Assistant Medical Examiner  
AT  
Wayne County Medical Examiner's Office

PERFORMED A POSTMORTEM EXAMINATION ON THE BODY  
Kapuscinski, David Michael

ON  
Apr 17, 2015

### SUMMARY & OPINION

It is my opinion that death was caused by cardiac dysrhythmia due to an electrical stun gun wound to the chest.

According to the police narrative, police responded to a residence for a sexual assault in progress. Officers observed the decedent assaulting the victim and after failing to comply with commands to release the victim, an electrical stun gun was deployed, possibly striking the decedent in the right arm, separating him from the victim. After the first stun gun deployment, the decedent reportedly started to get back up and kick at the officer at which time the officer deployed his stun gun a second time. However, there was no reaction from the decedent. The second officer then deployed his stun gun which took the decedent to the ground and he was subsequently handcuffed. The officers began to monitor the decedent's condition. As the decedent's condition deteriorated and he became unresponsive, CPR was initiated. Emergency medical services were summoned and the decedent was transported to Oakwood hospital with advanced cardiac life support in progress. He was pronounced dead approximately 30 minutes after arriving at the hospital.

Subsequent autopsy revealed two electrical stun gun wounds on the body: chest (1), right arm (1). The wounds were arbitrarily numbered for ease of description.

#### ELECTRICAL STUN GUN WOUND TO THE (ESGW#1):

There was an electrical stun gun wound to the left side of the chest consisting of two probe entrance wounds approximately 5/8 inches apart. Each probe wound was encircled by irregular purple contusions.

#### ELECTRICAL STUN GUN WOUND TO THE RIGHT ARM (ESGW#2):

There was an electrical stun gun wound to the posterior right arm, just below the elbow, consisting of two probe entrance wounds approximately 5/8 inches apart. The smaller probe wound had an associated faint purple contusion.

Additional injuries included abrasions to the chin, left lower chest, right lower abdomen, right upper arm, penis, and both knees. There were contusions on the chin and posterior left forearm.

Postmortem toxicological studies revealed amphetamine (3000 ng/mL) in the peripheral blood. Amphetamine is a central nervous system stimulant that can produce restlessness, hyperthermia, convulsions, hallucinations, respiratory failure, and cardiac failure. Reported blood concentrations in amphetamine-related fatalities ranged from 500 - 41000 ng/mL (mean, 9000 ng/mL). Additionally, steady-state blood levels of 2000 - 3000 ng/mL had been reported in addicts who consumed approximately 1000 mg daily. Amphetamine is also an adrenergic agonist whose effect is enhanced by stress, such as that experienced in the context of a police encounter. Whether or not the decedent used amphetamine in the past, or with any regularity, is unknown. It is unlikely that the amphetamine present in this case is a cause of death in and of itself.

The manner of death is classified as a homicide.

(Printed Tuesday, June 02, 2015 3:42:10 PM)

PENGAD 600-631-6989	EXHIBIT
	ROBINSON
	5
XN	7-18-18

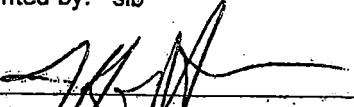


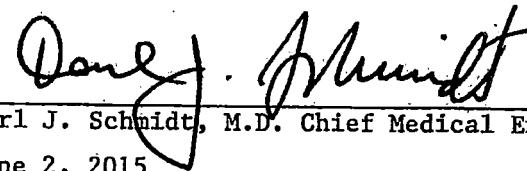
1300 East Warren Avenue  
Detroit, MI 48207

COUNTY OF DEATH  
WAYNE  
TOWN OF DEATH  
TRENTON  
DATE PRONOUNCED DEAD  
Apr 16, 2015

**POST MORTEM REPORT**

Printed by: sib

  
Jeffrey Hudson, M.D. Assistant Medical Examiner  
June 2, 2015

  
Carl J. Schmidt, M.D. Chief Medical Examiner  
June 2, 2015

(report continues on next page)



1300 East Warren Avenue  
Detroit, MI 48207

**POST MORTEM REPORT**

15-4606  
COUNTY OF DEATH  
WAYNE  
TOWN OF DEATH  
TRENTON  
DATE PRONOUNCED DEAD  
Apr 16, 2015

**Cause of Death:**

- Ia. CARDIAC DYSRHYTHMIA  
Ib. ELECTRICAL STUN GUN WOUND TO THE CHEST  
II. AMPHETAMINE USE

**Other Significant Conditions:**

**Manner of Death:**

Homicide

**NARRATIVE SUMMARY**

Case Number: 4606 - 15

Name: David Kapuscinski

Date of Pronounced Death: April 16, 2105

Date of Postmortem Examination: April 17, 2015

**EXTERNAL EXAMINATION:**

The body was that of a normally developed white male appearing about the recorded age of 39 years. The body measured 5 feet 9 inches in length and weighed 150 pounds. The body was cool, rigor mortis was fully developed, and livor mortis was present posteriorly and fixed. Clothing consisted of a hospital gown. The head was normocephalic and the scalp hair was brown, close-shaven, and receding. There was a brown mustache and stubble beard. The eyes had white sclerae, pale conjunctivae, and brown irides. The dentition was absent. No lesions of the oral mucosa were identified. There were no masses discernable in the neck and the larynx was in the midline. The thorax was symmetrical. The abdomen was flat. The external genitalia were those of an adult circumcised male. The extremities and back showed no significant deformities. There were tattoos on the left and right upper arms and left chest.

**EVIDENCE OF TREATMENT:**

An endotracheal tube was in place. There were intravascular lines in the anterior right upper arm and the left antecubital fossa. An intraosseous catheter was in the anterior right lower leg. Electrocardiogram lead pads and defibrillator pads were on the body.

**EVIDENCE OF INJURY:**

**ELECTRICAL STUN GUN WOUNDS**

There were 2 electrical stun gun wounds on the body: chest (1), right arm (1). The wounds are arbitrarily numbered for ease of description and do not reflect the sequence of firing.

**ELECTRICAL STUN GUN WOUND TO THE (ESGW#1):**

There was an electrical stun gun wound to the left side of the chest, located 14 1/4 inches below the top of the head and 2 1/2 inches left of the midline. The wound consisted of two probe entrance wounds (3/16 inch x 1/8 inch and 1/8 inch x 1/8 inch) approximately 5/8 inches apart. Each probe wound was encircled by irregular purple contusions.



1300 East Warren Avenue  
Detroit, MI 48207

### POST MORTEM REPORT

RECEIVED NUMBER  
15-4606  
COUNTY OF DEATH  
WAYNE  
TOWN OF DEATH  
TRENTON  
DATE PRONOUNCED DEAD  
Apr 16, 2015

#### ELECTRICAL STUN GUN WOUND TO THE RIGHT ARM (ESGW#2):

There was an electrical stun gun wound to the posterior right arm, just below the elbow, located 14 3/8 inches below the top of the right shoulder. The wound consisted of two probe entrance wounds (5/16 inches x 1/8 inch and 1/8 inch x 18 inch) approximately 5/8 inches apart. The smaller probe wound had an associated feint purple contusion.

#### Additional injuries:

There was a 1 inch x 3/4 inch abrasion with associated contusion on the chin, just below the lower lip. A 1 1/2 inch x 1/2 inch purple contusion was on the posterior left forearm. A 5/16 inch x 1/8 inch abrasion was on the left lower chest. On the right lower abdomen were two linear abrasions (3/16 inch and 1/8 inch). A 3/16 inch round abrasion was on the lateral right upper arm. There were multiple abrasions (1/8 inch - 3/4 inches) involving the ventral and dorsal aspects of the shaft of the penis as well as the head of the penis. There were multiple scabbed abrasions on the right knee. Two, 1/4 inch scabbed abrasions were on the left knee.

#### INTERNAL EXAMINATION:

An autopsy was performed utilizing the normal thoraco-abdominal and posterior coronal scalp incisions. The pleural, pericardial, and peritoneal cavities had smooth serosal surfaces and the viscera were in their normal anatomical positions. The internal systems were as follows:

#### Head:

No abnormality was noted in the reflected scalp, calvarium, dura, meninges or the base of the skull. The 1300 gm brain was free of neoplastic and other focal lesions, infarcts, and hemorrhages. The cerebral vascular system was unremarkable.

#### Neck:

No abnormality was noted in the cervical muscles, hyoid bone, laryngeal cartilages, trachea, or the cervical vertebral column.

#### Cardiovascular System:

The 375 gm heart had a normal configuration with an unremarkable epicardial surface and a moderate amount of epicardial fat. The coronary arteries had no significant atherosclerotic disease. No acute thrombi were present. Both ventricles were of normal size and their walls were of normal thickness. No focal endomyocardial lesions were present. The papillary muscles and chordae tendineae were not thickened, and the heart valves were unremarkable. The aorta had no significant atherosclerosis. The major arteries and great veins showed normal distribution.

#### Respiratory System:

The larynx and trachea were unremarkable. The right and left lungs weighed 800 gm and 700 gm, respectively. There was passive congestion in the parenchyma that was accentuated with dependent lividity as well as marked edema. No pulmonary emboli were identified.

#### Hepatobiliary System:

The 1700 gm liver had firm dark tan surfaces and an unremarkable parenchymal pattern. The gallbladder was not present.

#### Hemolymphatics:

The 175 gm spleen had smooth surfaces and dark purple firm pulp. There was no significant lymphadenopathy.

#### Alimentary System:

The tongue, esophagus, stomach, small bowel, appendix and colon were unremarkable. The lining of the stomach had an intact and unremarkable rugal pattern and the contents of the stomach consisted of approximately 50 mL of partially



WAYNE COUNTY MEDICAL EXAMINER

1300 East Warren Avenue  
Detroit, MI 48207

POST MORTEM REPORT

M.E. CASE NUMBER  
15-4606  
COUNTY OF DEATH  
WAYNE  
TOWN OF DEATH  
TRENTON  
DATE PRONOUNCED DEAD  
Apr 16, 2015

digested food.

Pancreas:

The pancreas showed an unremarkable tan lobulated pattern.

Endocrine System:

The thyroid gland had a normal bilobed configuration. The adrenal glands were each unremarkable with golden-yellow cortices.

Genitourinary System:

The right and left kidneys each weighed 150 gm. Each kidney had smooth cortical surfaces, normal cortico-medullary regions and no changes in the calyceal systems, pelvis, ureters, or bladder.

Musculoskeletal System:

All the muscles and axial skeleton were free of any significant abnormalities.

Routine tissue specimens were retained in formalin for one year after autopsy in accordance with the current record retention schedule.

MICROSCOPIC DESCRIPTION

Cassette Summary:

1. Brain
2. Lung
3. Heart
4. Lung
5. Liver
6. Lung
7. Brain
8. Lung
9. Skin / Heart
10. Kidneys

Microscopic Description:

Skin - A section of skin from the chest wound showed streaming of nuclei of the basement membrane consistent with electrothermal injury. There was also hemorrhage corresponding to the areas of probe penetration.

Lung - Sections of the lungs showed alveolar hemorrhage and multiple pigmented alveolar macrophages.

Heart - Heart sections showed mild enlargement of some cardiac myocytes with large, hyperchromatic nuclei. There was also mild fibrosis.

Liver - A section of the liver showed sinusoidal congestion.

Microscopic examination of the brain and kidneys revealed no significant histopathologic changes.

(End of Report)

## Full body, male, anterior and posterior views (ventral and dorsal)

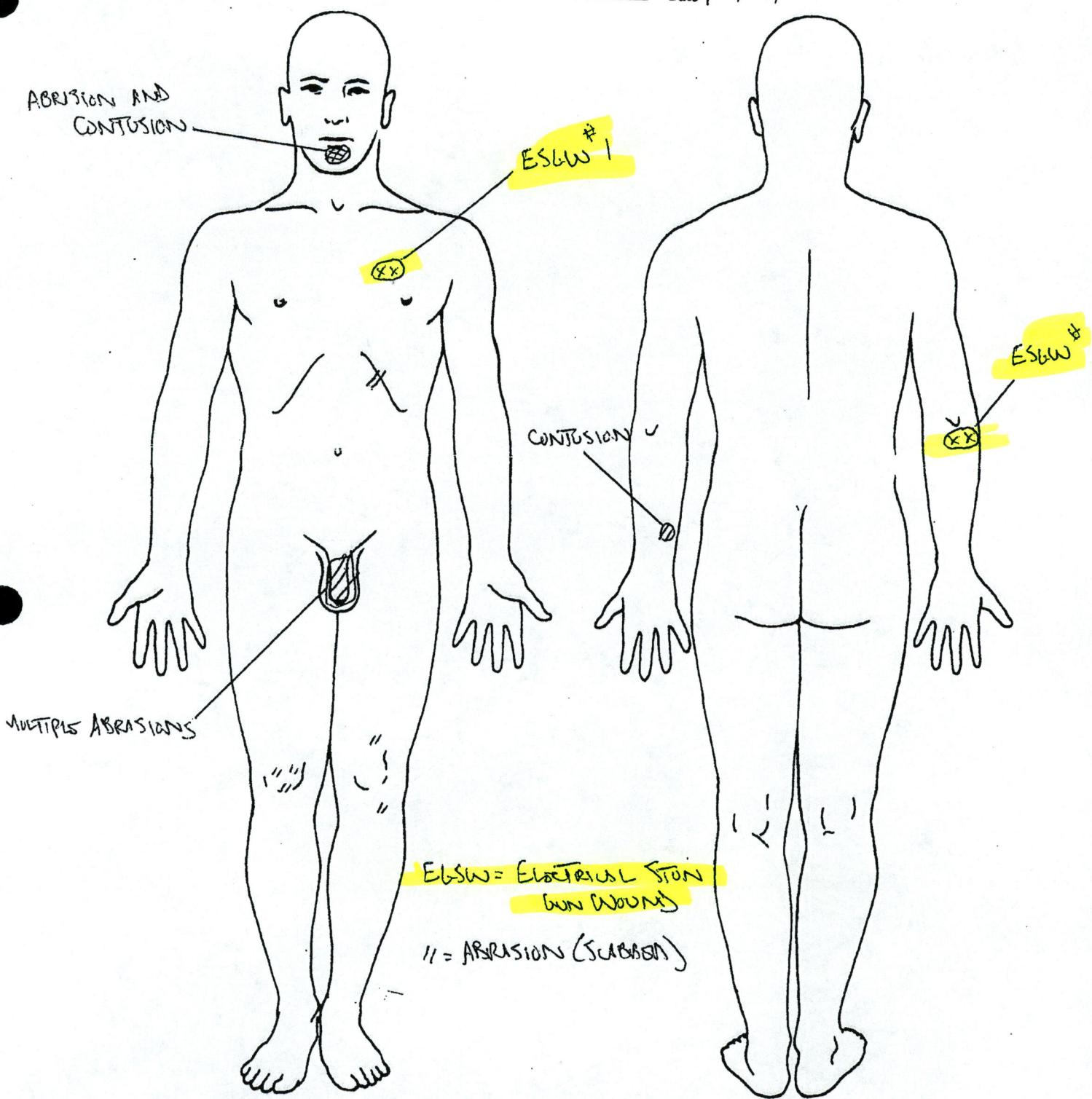
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Age 39 Race CW

Sex M

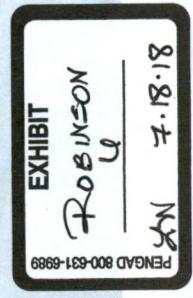
Autopsy No. 15-4f606

Date 4/17/2015



Courtesy of the American Society of Clinical Pathologists, Chicago, Ill.

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EXHIBIT

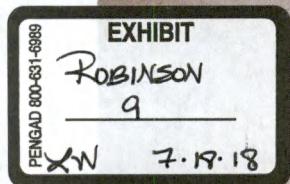
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JW 7-18-18







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